

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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RENATO GUIMARAES, JR.,

Case No. 05-CV-2210(DC)

Plaintiff,

-against-

AFFIDAVIT OF WILLIAM J. APUZZO

SPEISER, KRAUSE, NOLAN & GRANITO,
a professional corporation, f/k/a SPEISER,
KRAUSE, MADOLE & LEAR, a professional
corporation,

Defendant.

-----X
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

WILLIAM J. APUZZO, being duly sworn, deposes and says:

1. I am an attorney with Apuzzo & Chase, attorneys for defendant Speiser Krause Nolan & Granito ("Speiser Krause"). I submit this affidavit in opposition to plaintiff Renato Guimaraes, Jr.'s ("Guimaraes") motion for summary judgment on Speiser Krause's counterclaims.
2. As of the date of this affidavit, your affiant has not received anything other than tele-facsimile copies of the declarations which are allegedly "sworn" by several of Speiser Krause's former TAM clients. Unless the originals of each are filed, Speiser Krause requests that they be disregarded as evidence in support of plaintiff's motion.
3. Annexed hereto as "Exhibit A" are relevant excerpts of the transcript of Guimaraes' deposition taken April 25, 2007.

4. Annexed hereto as "Exhibit A.1" are relevant excerpts of the transcript of Guimaraes' deposition taken November 2, 2005.
5. Annexed hereto as "Exhibit A.2" are relevant excerpts of the transcript of Guimaraes' deposition taken October 7, 2005.
6. Annexed hereto as "Exhibit A.3" are relevant excerpts of the transcript of Gerard Lear's deposition taken October 11, 2005.
7. Annexed hereto as "Exhibit A.4" are relevant excerpts of the transcript of Gerard Lear's deposition taken October 12, 2005.
8. Annexed hereto as "Exhibit A.5" are relevant excerpts of the transcript of Gerard Lear's deposition taken April 23, 2007.
9. Annexed hereto as "Exhibit A.6" are relevant excerpts of the transcript of Leigh Ballen's deposition taken October 10, 2005.
10. Annexed hereto as "Exhibit A.7" are relevant excerpts of the transcript of Arthur Ballen's deposition taken October 11, 2005.
11. Annexed hereto as "Exhibit A.8" are relevant excerpts of the transcript of Guimaraes' deposition taken November 7, 2005.

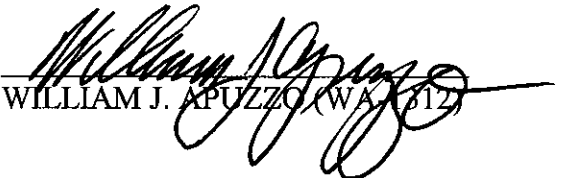
12. Annexed hereto as “Exhibit B” is Guimaraes’ affidavit dated February 6, 2001 (Doc. No. RG-00386-8).
13. Annexed hereto as “Exhibit C” is a true and accurate copy of correspondence from Guimaraes to Hon. Jane Solomon dated October 13, 2000. (Doc. No. SK-000655-6).
14. Annexed hereto as “Exhibit D” is a true and accurate copy of correspondence from Guimaraes to Amaro (Doc. No. SK-000653-4).
15. Annexed hereto as “Exhibit E” is a true and accurate copy of correspondence from Guimaraes to the United States Federal Bureau of Investigation dated September 20, 2000. (Doc. No. SK-2927-9).
16. Annexed hereto as “Exhibit F” is a true and accurate copy of correspondence from Guimaraes to Einhorn dated February 2004 (Doc. No. SK-2938-41).
17. Annexed hereto as “Exhibit G” are true and accurate copies of documents concerning the substitution of Speiser Krause by the Lack Law Firm between 2006 and 2007.
18. Annexed hereto as “Exhibit H” is a true and accurate copy of correspondence from Guimaraes to TAM Clients dated January 22, 2001. (Doc. No. SK-0002332-8).

19. Annexed hereto as “Exhibit I” is a true and accurate copy of correspondence from Guimaraes to Wanderley Minitti dated December 22, 2000.
20. Annexed hereto as “Exhibit J” is a true and accurate copy of correspondence from Arthur Ballen to Guimaraes dated November 9, 2000 (Doc. No. SK-000598).
21. Annexed hereto as “Exhibit K” is a true and accurate copy of Guimaraes’ privilege log dated April 24, 2007.
22. Annexed hereto as “Exhibit L” is the affidavit of Gerard R. Lear sworn to June 28, 2007.
23. Annexed hereto as “Exhibit M” is a true and accurate copy of correspondence from Guimaraes dated October 5, 2000. (Doc. No. SK-000637-8).
24. Annexed hereto as “Exhibit N” is a true and accurate copy of correspondence from Guimaraes dated October 9, 2000 (Doc. No. SK-000645-8).
25. Annexed hereto as “Exhibit O” is a true and accurate copy of correspondence from Guimaraes dated October 18, 2000 (Doc. No. SK-000657-9).
26. Annexed hereto as “Exhibit P” is a copy of the decision/order of the United States District Court for the Southern District of New York in the matter entitled: *In re: Letter Rogatory Issued by Second Part of the III Civil Regional Court of Jabaquara/Saude Sao*

Paulo, Brazil, No. M-13-72(RO), 2001 WL 1033611 (Owen, J), dated September 7, 2001.

27. Annexed hereto as "Exhibit Q" is a copy of the decision/order of the United States District Court for the Eastern District of New York in the matter entitled *In re: Letter Rogatory Issued By the Second Part of the III Civil Regional Court of Jabaquara/Saude, Sao Paulo, Brazil*, No. 01-MC-212(JC) 2002 WL 257822 (Gleeson, J) , dated February 6, 2002.
28. Annexed hereto as "Exhibit R" is a copy of the decision/order of the Circuit Court for the Eleventh Judicial Circuit of Miami-Dade County, Florida in the matter entitled *Klepetar et. al v. Northrup [sic] Grumman Corp.*, (Case No 01-13502 CA (23)) dated November 15, 2003.
29. Speiser Krause's opposition is accompanied by its statement pursuant to Local Civil Rule 56.1(b), and a Memorandum of Law.

WHEREFORE, your deponent respectfully prays for an order denying the plaintiff's motion for summary judgment and for such other, further or different relief as this court deems just and proper.


WILLIAM J. APUZZO (WA) 312

Sworn to before me this 29th
Day of June 2007



NICOLE APUZZO FILANINO
Notary Public, State of New York
No. 02F18021978
Qualified in Westchester County
Commission Expires 12/27/2009

EXHIBIT "A"

1 Renato Guimaraes

2 anything, I even did not think of that.

3 Q. So, that would be a no?

4 A. Okay.

5 Q. Thank you.

6 Did you ever make a complaint that
7 Arthur Ballen stayed at only expensive luxury
8 hotels which caused a high cost to the TAM clients?

9 A. No, I was with him at the hotel most
10 of the time.

11 Q. In California, you have several
12 lawsuits pending; is that correct?

13 A. I have, I believe, just one, my one,
14 I think is just one against Northrop for my winning
15 attorney fee. I may be wrong but my personal
16 lawsuit is against Northrop.

17 Q. Maybe I could assist you. You have a
18 case pending in Los Angeles which is against the
19 insurance company for Northrop; is that correct?

20 A. It's the same case, yes.

21 Q. And you have another case against
22 Northrop to domesticate your sucumbencia in the
23 Orange County action; correct?

24 A. But in that case, the families are
25 the plaintiff, not me.

1 Renato Guimaraes

2 Q. I understand, but as part of that,
3 your sucumbencia, the 20 per cent fee, is part of
4 the Orange County action; is that correct?

5 A. Yes. I guess I get your meaning,
6 yes, I am involved but I am not the plaintiff, I am
7 the attorney for these people in Brazil but I am
8 not a party, I am an attorney, yes.

9 Q. But you have an interest in the
10 outcome of that action?

11 A. Yes, the more they get, the more will
12 be my fee, yes. I'm sorry.

13 Q. And in the Orange County action where
14 the clients, the TAM clients, are the plaintiffs,
15 how much would be the sucumbencia award if you are
16 successful?

17 A. I understand that you don't have a
18 sucumbencia in U.S., only in Brazil. It will be
19 today, it's not final yet, 20 per cent paid, not by
20 the client but by the losing party, Northrop in
21 this case.

22 And the Sao Paulo Supreme Court even
23 diminish the award for the families, the damage for
24 the families, on the normal pain and suffering was
25 down. Even though the Superior Court of Sao Paulo

1 Renato Guimaraes

2 confirmed my previous 20 per cent merit for the
3 sucumbencia, for the fee to be paid by the losing
4 party, Northrop.

5 Q. Is that sucumbencia award based upon
6 26 clients, 65 clients or the remaining eight
7 clients who have not yet settled?

8 A. It's related to the winner party at
9 the end, that is discussion. If some families are
10 entitled to that award, it's still going on, at the
11 final it will be a decision, family X, Y, Z is
12 entitled, A, B is not, I will have only 20 per cent
13 of the first one.

14 Q. And if a client has settled his
15 action, that will not be included; correct?

16 A. Not in the action, but as far as,
17 according to the Brazilian law, as far as Northrop
18 or whoever settle a case without respecting the
19 winning attorney fee, the attorney in Brazil has an
20 independent case against it, in this case Northrop.

21 Q. The other case by Renato Guimaraes
22 against United States Aviation Insurance Company in
23 Los Angeles, do I understand correctly that you are
24 suing them because they paid Speiser Krause without
25 recognizing your lien for attorneys fees; is that

1 Renato Guimaraes

2 correct?

3 A. Correct.

4 Q. And your prior testimony, I
5 understand you worked on that case, on those cases,
6 for 20 years; is that correct?

7 A. That's correct.

8 MR. BERMAN: I object based on
9 relevancy.

10 MR. APUZZO: Relevancy is not a
11 proper objection in the deposition, as
12 you know it, all right. Object either to
13 form, privilege, you know the drill.

14 MR. BERMAN: Compared to what you
15 were doing yesterday --

16 MR. APUZZO: What I'm trying to do
17 is lay a foundation for questions so you
18 don't object that there's no foundation
19 for my questions.

20 Let me continue, please.

21 Q. Those Varig clients, they terminated
22 you without any cause; correct?

23 A. Without any --

24 Q. Cause.

25 A. The cause is Lloyd's of London don't

1 Renato Guimaraes

2 want to pay the settlement I made, except they
3 fired me and put Speiser Krause, that's a good
4 tortious interference by Speiser Krause.

5 Q. Now, there came a time when you found
6 out that attorney Luis Sampaio replaced you on the
7 Varig case; is that correct?

8 A. Just to sign the settlement, yes.

9 Q. So, just by signing the settlement,
10 he got, in one instance, \$98,000 and the client
11 received less than he made; is that correct?

12 A. In one case at least, yes, he got
13 more money than the little kid.

14 Q. And there came a time when you found
15 out that Arthur Ballen was responsible for these
16 clients firing you and hiring Louis Sampaio;
17 correct?

18 A. No. I think the correct answer would
19 be co-responsible, Lloyd's of London, they hate me,
20 and Sampaio, too, of course, it was a team.

21 Q. As a result of their actions, you
22 were not able to get a fee for 20 years worth of
23 work; is that correct?

24 A. Not really, one or two families
25 voluntarily said Dr. Guimaraes, you know what you

1 Renato Guimaraes

2 Q. So, with the assistance of the
3 interpreter, can you say that you were angry at
4 Speiser Krause?

5 A. Not personal, I understand their
6 dirty tricks, I have to face it, human being, I
7 don't hate them.

8 Q. Did you ever feel that you wanted to
9 get revenge against Speiser Krause for making you
10 lose the Varig fees after 20 years worth of work?

11 A. No. I am not the judge of the world,
12 I want my rights and if I may I will do my best to
13 prevent other people to suffering the same thing
14 from Speiser Krause, it's my duty, yes.

15 Q. So, you would have liked to see them
16 punished for what they did?

17 MR. BERMAN: Object to the form.

18 A. I don't like anyone to be punished
19 but sometimes it's necessary, I don't like it but
20 that's the way life is.

21 Q. But, in a case like this, you would
22 like to see them punished; correct?

23 A. I would like that justice will be
24 made.

25 Q. Now, if I understand your prior

1 Renato Guimaraes

2 MR. BERMAN: Object as to form.

3 Q. Can you answer the question?

4 A. Can you repeat?

5 Q. I'll repeat it.

6 If Speiser Krause loses their fees on
7 those eight TAM clients that are now represented by
8 Walter Lack, would that be a fair punishment of
9 Speiser Krause?

10 A. In Brazil it will be fair, at least
11 fair.

12 Q. Did you report to anybody that
13 Speiser Krause committed crimes and treason?

14 A. Yes, I did, a lot of times. How,
15 because, again --

16 MR. BERMAN: No, just answer his
17 question. You don't have to elaborate,
18 unless he asks you a next question.

19 Is that all right if I tell him
20 that?

21 MR. APUZZO: That's all right.

22 Q. Did you know that those statements
23 would harm the reputation of Speiser Krause and the
24 world legal community?

25 A. Yes.

1 Renato Guimaraes

2 Mr. Guimaraes, can you identify this
3 Veja article?

4 (The witness examines document.)

5 A. Yes, sir.

6 Q. What is Veja?

7 A. It's a kind of Time Magazine for
8 Brazil, the leading by far magazine by Brazil, I
9 think is the fifth in the whole world, the first
10 one.

11 Q. Does your photograph appear --

12 A. On the second page, yes. The first
13 one is the fellow who worked a few weeks with
14 Speiser Krause before he gave up in Sao Paulo, was
15 found to replace me.

16 Q. And who was that fellow?

17 A. Fernando. Fernando is a nice man,
18 very good English, he has a family in this case.
19 He work free as an interpreter for us with Speiser
20 Krause and families in the beginning. He was very
21 good. He, at the beginning, he wrote Mr.
22 Guimaraes, in the official papers, criminal paper,
23 Mr. Guimaraes, what are you doing here, you are
24 saying bad things about Speiser Krause, I represent
25 Speiser Krause. And I have five days to reply, and

1 Renato Guimaraes

2 I did, and they gave up.

3 Q. Is this Fernando Lootenberg?

4 A. Yes, sir.

5 Q. And he's an attorney in Brazil?

6 A. In Sao Paulo, yes. He's going up,
7 up, up. And I said yes, I did, and I prove.

8 Q. Can you tell us what the date of this
9 magazine article is?

10 A. I believe it's on the first page,
11 sir, I think I put Veja, March 14, 2001.

12 Q. And you refer to this as the document
13 that blew up the scandal?

14 A. Yes. It was between Speiser Krause
15 and families and myself, you know, everyone ring
16 the bell, telephone, what's going on, and the press
17 and so forth.

18 Q. And you were interviewed for this
19 magazine article?

20 A. Yes, and the picture was special for
21 this report.

22 Q. Where were you interviewed?

23 A. I was interviewed several times by
24 the reporter Marcello Carneiro whose name is here,
25 first page. He was a journalist. He called me

1 Renato Guimaraes

2 by Speiser Krause) will take about 35 per cent.

3 The law firm is conning its clients. Guimaraes
4 answered: "Speiser Krause betrays the families,
5 insisting only on infamous settlements, and defends
6 the interest of TAM." And it continues, "Susannah
7 Klepetar, who's also an officer in the association,
8 disagrees (with the accuser.)"

9 A. Say again, disagree --

10 Q. "Disagrees and leaves horrified from
11 a meeting with the Americans, she switched from
12 Speiser Krause for another American law firm."

13 My question is, when you refer to the
14 accuser, you're referring to Sandra Assali;
15 correct?

16 A. You say --

17 Q. Accuser.

18 A. Yes, I refer to Sandra Assali.

19 Q. Now, did you make this quote to Veja
20 Magazine, the one that we just read.

21 (Whereupon the interpreter
22 translates.)

23 A. No. Of course the writing belong to
24 the reporter. The idea, of course, is mine and
25 Andre Martins, but the point is 35 per cent I think

1 Renato Guimaraes

2 don't recall, it's not a common name. I know her,
3 she has a problem on the neck, I will tell you in a
4 few minutes, I don't want to kill your time.

5 MR. BERMAN: If it comes to you,
6 please let counsel know.

7 THE WITNESS: Yes, I will.

8 Q. Did Klepetar ever tell you that she
9 trusted you and not Speiser Krause?

10 (Whereupon the interpreter
11 translates.)

12 A. Yes, sure, lots of people said so.

13 Q. No, no, Klepetar.

14 A. Klepetar, yes, she was furious.

15 Q. Did you tell her to switch attorneys
16 from Speiser Krause to an American attorney?

17 A. Yes. She asked me for -- I start
18 with Herman, not with --

19 Q. Herman & Mermelstein?

20 A. Yes.

21 Q. And she followed your advice to
22 switch attorneys to Herman & Mermelstein?

23 A. And I follow her wish.

24 Q. Later on on that same page that we
25 were discussing, the paragraph starts "Proof of the

1 Renato Guimaraes

2 (Off the record at 11:50 a.m.)

3 (Resuming at 11:55 a.m.)

4 EXAMINATION CONTINUING BY MR. APUZZO:

5 Q. Mr. Guimaraes, can you turn to the
6 page RG-823. I'm just going to read a couple of
7 sentences and I just want you to confirm that this
8 was, in fact, said.

9 "The betrayal scandal is in full
10 force in Brazil." And, then, following, it says,
11 "The new story comes as a surprise to millions in
12 the legal profession internationally."

13 Was it your statement that the Veja
14 article would be read by millions in the legal
15 profession internationally?

16 A. One sentence I try to say the new,
17 the breakthrough, new, is surprising millions
18 because Veja has over one million issues each week,
19 and the judiciary internationally, yes.

20 Q. Did the Brazilian courts approve the
21 settlements for the families that did accept the
22 settlements? It's not in the article, it's just a
23 question.

24 A. I'm sorry, did the Brazilian --

25 Q. Courts, did they approve the

1 Renato Guimaraes

2 settlements for the families that accepted those
3 settlements?

4 A. The first reaction from the curator
5 of minors --

6 Q. No, no, you have to hear my
7 question. The Brazilian courts were required to
8 approve settlements; is that correct?

9 A. Oh, I'm sorry, yes, they are.

10 Q. And for those families that accepted
11 the settlements, the Brazilian court approved;
12 isn't that correct?

13 (Whereupon the interpreter
14 translates.)

15 A. I have to elaborate on that. Yes and
16 not.

17 Q. I understand, maybe the following
18 questions will help you. Where you say in the next
19 paragraph on this, it starts "Everything out of
20 control of the courts and of the overseeing power
21 of the Department of Justice," then it says --

22 A. Oh, okay, I see.

23 Q. Following that, you make a statement
24 that the Brazilian courts no longer have control;
25 is that correct?

1 Renato Guimaraes

2 A. She is my client, she gave me
3 authorization. In Brazil, you have two pieces, one
4 is the contract on the fee itself, and another one
5 is authorization to represent to the court. Here
6 you have just one.

7 Q. Do you expect to receive a fee for
8 the work that you're doing on the Klepetar case?

9 A. It's up to her, you know, she's
10 religious, you know, a lovely lady, whatever she
11 decides, it's okay, I want to help her.

12 Q. Is she one of the clients represented
13 by Walter Lack presently?

14 A. Yes.

15 Q. So, you have a deal with Walter Lack
16 for 25 per cent of the fees?

17 A. Yes.

18 Q. So, you will be getting a fee from
19 this lovely religious lady?

20 A. Yes.

21 Q. She can't refuse you this fee;
22 correct?

23 A. Yes. As with Speiser Krause, yes.

24 Q. Turning to 838, RG-00838, do you see
25 down the page a little bit you enumerate four

1 Renato Guimaraes

2 items, it starts "If Speiser Krause had accepted
3 the opinion held by the undersigned of 1. Not
4 lying to the families "we lost our case in the
5 USA," then it continues on, 2, 3 and 4?

6 A. Question is?

7 Q. Do you see that in the document?

8 A. Yes.

9 Q. The question now is, it's correct
10 that Speiser Krause did lose the forum non
11 conveniens motion in California; is that correct?

12 A. I believe it was on the stay, he did
13 not lose, I think the affect even today is the
14 stay.

15 Q. Do you understand that Northrop
16 Grumman in California made a motion, an application
17 to the court, to dismiss the Brazilian clients in
18 California, or to stay the action?

19 A. To stay.

20 Q. And do you understand that the judge
21 granted their motion and stayed the actions in
22 California?

23 A. Yes, that's the situation.

24 Q. And do you understand that Speiser
25 Krause opposed the application of Northrop Grumman

1 Renato Guimaraes

2 Q. Yes.

3 A. Well, the client, maybe. I don't
4 recall if it was the client, his or her attorney,
5 local attorney who referred the case to us, Arthur
6 and Leigh and the translator which was Duda, I
7 believe. It's a small room, you know, just between
8 the two beds and the bedroom, not a commercial or
9 business room, just for the first time.

10 Q. And who said the words that we lost
11 the case on the merits?

12 A. Mr. Arthur Ballen.

13 Q. And he said that to the interpreter?

14 A. Yes, to both, to the interpreter if
15 was there, I believe so, and to the client, and to
16 me.

17 Q. And to you?

18 A. Yes.

19 Q. And you knew that they didn't lose
20 the case on the merits, is that correct, because
21 you received the letter from Tim Cook?

22 A. Well, the letter from Tim Cook was
23 years ago, so we are talking, in the assumption we
24 both know we still have a chance in America, that's
25 because I insist to them please tell about the no

1 Renato Guimaraes

2 deposit of the bond.

3 And they, oh, Renato, you don't know
4 how this work, we are the boss, we know the
5 strategy. I said okay, it's up to you, but don't
6 forget they are not following the rules in
7 California. So, it was an understanding going on,
8 we still are there under a stay.

9 And then came this surprise, and
10 true, we lost the case. He did not say on the
11 merits but it was understood for us all done, threw
12 away. That was shocking.

13 Q. When was this conversation, can you
14 fix the date?

15 A. When, those days was the holy week,
16 2000, April 2000. We had many meetings, not the
17 first one.

18 Q. When he said this, did you question
19 Mr. Ballen about the loss of the case in
20 California?

21 A. Immediately, you know, it was my
22 instinct to say what we lost in front of the
23 client, and then on and on. That was terrible.

24 Q. But you knew from the prior letter
25 from Tim Cook that the case was not lost?

1 Renato Guimaraes

2 A. Not only this letter but in many many
3 conversations. The fax to Tim Cook -- Our
4 understanding, how to break it, you know, the forum
5 non conveniens, and so far.

6 I made two lawsuits, many people told
7 them I was crazy, two lawsuits to throw away the
8 Jabaquara case. And I am right in the sense my
9 legal foundation was the real wish of the family,
10 the painful family.

11 So, to have a case there in
12 California, not here in Brazil, what did this poor
13 family do in Brazil is to follow the order of the
14 California judge, they are obliged to do that. But
15 the real wish of these people, they are willing to
16 have the judgement in California, that's the
17 Brazilian law. But I lost, so it was we live 24
18 hours a day on this understanding, it was not the
19 Tim Cook letter.

20 Q. When you heard this said by Arthur
21 Ballen, did you say anything to the client or
22 Arthur Ballen in that room?

23 MR. BERMAN: Objection.

24 It's been asked and answered.

25 (Whereupon the interpreter

1 Renato Guimaraes

2 A. First all in Sao Paulo. Some has
3 been dismissed, some are still on. All in Sao
4 Paulo, none out of Sao Paulo. Now we have out of
5 Sao Paulo but not at this time.

6 Q. And do I understand correctly that
7 there was a suit in Sao Paulo by the association
8 against Speiser Krause concerning the attorney
9 fees?

10 A. Yes.

11 Q. And is that still pending?

12 A. No, it is dismissed.

13 Q. Last page, 841, it's RG-00841, you
14 make reference here concerning a proceeding
15 instituted with the Sao Paulo Branch of the
16 Brazilian Bar Association against Speiser Krause,
17 Proceeding Number 2405 of the Commission on
18 Prerogatives?

19 MR. BERMAN: Is that correct?

20 THE INTERPRETER: Yes.

21 Q. Can you describe what is Proceeding
22 2405 that you refer to?

23 A. After, you know, this problem calmed
24 down, I thought it was my imperative duty as a
25 shared member of that contract to tell to the same

1 Renato Guimaraes
2 ethical commission of the bar what was going on.
3 And to make a long story short, the conclusion,
4 approve it, the conclusion was to send it, the bar,
5 not me, the bar to send three letters. I'm sure
6 you have this copy, first to the federal prosecutor
7 in Sao Paulo, second to U.S. Consulate, American
8 Consulate in Sao Paulo, and the third to the police
9 airport saying that Speiser Krause committed in
10 Brazil a crime in this case for doing what is not
11 possible for Brazilian attorneys.

12 And this was approved but never said,
13 they changed. I have my suspicion why this
14 happened but I have no evidence. Anyhow, it never
15 got out there, but it was approved, I have copies
16 of that here.

17 Q. Do I understand correctly that you
18 instituted this proceeding with the Brazilian Bar
19 Association?

20 A. Yes, full of the documentation. And
21 I recall the reporter for the Board of the
22 Committee was a very prominent attorney with great
23 experience in international affairs, he has a large
24 law firm, and he look at that very carefully.

25 Q. And, to your knowledge, that

1 Renato Guimaraes
2 proceeding by the Brazilian Bar Association against
3 Speiser Krause was dismissed?

4 A. Yes, never send the letters, yes.

5 MR. APUZZO: Let's break now.

6 (Off the record at 12:55 p.m.)

7 (Resuming after recess at 1:40 p.m.)

8 EXAMINATION CONTINUING BY MR. APUZZO:

9 Q. I'm going to show you, Mr. Guimaraes,
10 what has been marked for identification as Exhibit
11 B, and it's a series of documents. I would like
12 you to review these.

13 Let me identify them for the record,
14 the letters are all in Portuguese, for the most
15 part, generated on the letterhead of Renato
16 Guimaraes, Jr., and there's a range of Bates stamps
17 from SK-25, SK-26, SK-16, SK-17, SK-657, SK-658,
18 SK-659, SK-660, SK-15, SK-661, SK-662, SK-663,
19 SK-664, 665, 666, 667, 668 and 669.

20 The reason why the Speiser Krause
21 Bates stamp are out of order is that we tried to
22 put these in some sort of chronological fashion.

23 Dr. Guimaraes, in reviewing these
24 documents, can you tell us if these are all
25 documents in Portuguese that were generated by

1 Renato Guimaraes

2 because I could not sleep and he made medicine for
3 my sleeping under stress. And he's back to Brazil
4 and now he's willing to come here to testify in a
5 trial if possible.

6 He has been in a trial here many
7 times because he was here in New York a clinical
8 director, and for dozens of people, drugs,
9 violence, crime, suicide, he has to say in the
10 courts, he is accustomed to make the position.

11 And one, two months ago, we met in
12 Brazil. He is very organized, he has my record.
13 He is good because he is not affidavit by legal, he
14 knows my inner feelings.

15 Q. Can you spell the doctor's name?

16 THE INTERPRETER: It is spelled
17 S-E-I-D-E-M-B-E-R-G.

18 MR. BERMAN: First name Cilio.

19 Q. So, Dr. Guimaraes, on the second page
20 where you say, "Crimes of coercion during the
21 course of the legal action committed by Arthur and
22 Leigh Ballen" --

23 A. No, no, physically by Sampaio.

24 Q. On top you also say there's a crime
25 of coercion --

1 Renato Guimaraes

2 A. Yes, it's coercion.

3 Q. And it violates Brazilian penal code
4 Article 344?

5 A. Yes, it was committed by Arthur, by
6 the Ballens, but personally committed the act by
7 Sampaio, yes.

8 Q. And you say that the punishment is
9 one to four years of incarceration and fine in the
10 amount of two to ten thousands cruzeiros in
11 addition.

12 A. I did not say that, the law say that.

13 MR. BERMAN: It's a quote of the
14 statute.

15 A. Because violence, when someone is in
16 a lawsuit, it's a violation the judicial area.

17 Q. Then you follow, "Concealment of
18 evidence, Thomas Frizzel - evidence of Northrop's
19 fault to be presented to the jury in California in
20 April, request of help from the FBI," that's the
21 Federal Bureau of Investigation?

22 A. That's correct.

23 Q. "The evidence in question was needed
24 for the case trials in Brazil."

25 You asked the FBI in the United

1 Renato Guimaraes

2 A. I don't know in this particular five
3 or six case, but assuming as general they did
4 approve has nothing to do with my merits here which
5 cover all 65 families, and I said according to the
6 Brazilian law it's illegal, because of the lie and
7 their lying. And that's my comments, I hope will
8 be my answer to your question.

9 Q. That is fine. Did you bring also an
10 action in the Brazilian courts to nullify the
11 settlements?

12 A. No, I made it to prevent the
13 argument, the settlements, not before, after.

14 Q. So, you brought an action to present
15 the settlements after they were made but before
16 they were accepted?

17 A. Right. It's not technically an
18 action, it's just a request to the curator of minor
19 to do something.

20 Q. And your requests were not granted?

21 A. Yes, was granted. Took a long time
22 until they fix some clauses. Not all of them, the
23 pressure for the families, very strong, they
24 started emancipated, the minors, somehow they went
25 through the delay.

1 Renato Guimaraes

2 Q. So, the settlements were not illegal?

3 A. It was illegal. Why, because of the
4 lie, we lost the case, we did not tell the truth,
5 we omitted the truth of the California judge. For
6 this aspect, yes.

7 Q. And did you make an application to
8 prevent the settlements because of the lie?

9 (Whereupon the interpreter
10 translates.)

11 A. Because of the damage.

12 Q. And even with the application to
13 prevent the settlements, they still went through;
14 correct?

15 A. Yes, most of them. Some regret, give
16 us -- argue with us in California, but most of them
17 did agree and they accept, well, Renato, you are a
18 dreamer, and so forth, I want my money, who pay for
19 the kids. And they did receive the money.

20 Q. And the court accepted those
21 settlements?

22 A. Yes.

23 Q. So, would that make the settlements
24 legal?

25 A. No. I believe the family has a case

1 Renato Guimaraes

2 yet to do, if they wish, but that's another case.

3 Q. A little bit further down, the next
4 paragraph, you make a statement, "I even had to ask
5 the Honorable FBI Director Thomas J. Pickard to" --

6 A. I lost you.

7 Q. After the settlements, skip down two,
8 starts out "Because we were never told about Mr.
9 Frizzel's evidence."

10 A. Go ahead, and because of Frank
11 Granito.

12 Q. Yes.

13 (The witness examines document.)

14 Q. "Because of Mr. Frank Granito the
15 third, another attorney from Speiser Krause tried
16 to put down Mr. Frizzel to saying that he is pretty
17 junior," you say, "I even had to ask the Honorable
18 FBI Director Thomas J. Pickard to help us by
19 sending to the Jabaquara judge in Brazil a copy of
20 this crucial evidence."

21 So, does this follow, were you
22 telling this New York judge that Speiser Krause,
23 Mr. Granito was, in fact, concealing evidence here?

24 A. Not only him, but the whole group of
25 Speiser Krause except Frizzel. In fact, I tried to

1 Renato Guimaraes

2 A. As I had an explanation probably from
3 Herman, I say yes, that's true, but now you are
4 more sophisticated, I agree with you, I did not
5 represent 65 of these people.

6 Q. On paragraph number three, the last
7 line, you say "They directed me to go to the United
8 States and interview lawyers for the purposes of
9 replacing Speiser Krause as United States
10 litigation attorneys."

11 Who directed you?

12 A. Several of them, maybe Susannah
13 Klepetar, maybe Professor Fernando Lootenberg, but
14 the idea was partially mine, not them, and they
15 inquired, okay, try to see if you find somebody
16 there, and so forth.

17 Q. So, the idea to go to the United
18 States to find new attorneys was basically yours
19 and they said okay, see what you can do Renato, get
20 us a good attorney; correct?

21 MR. BERMAN: Object to the form.

22 A. According to the decision I made of
23 my duty covered by 27 votes, it was my duty to do
24 that. If I omitted, then I will be ethical
25 problem. I should interfere, it was my duty, yes.

1 Renato Guimaraes

2 working harder for more money, you know, who else
3 could be --

4 MR. APUZZO: Say this please in
5 Portuguese because maybe he's not
6 understanding. It's very simple.

7 Q. You make a statement here that
8 someone is being paid under the table, unlawfully
9 illegally, that's the inference. My question is,
10 who is being paid under the table?

11 MR. BERMAN: Object to the form.

12 A. My answer is, if I knew I will name
13 it. If I do not know I leave in the air.

14 Q. So, you're telling the clients and
15 colleagues that someone in the air is being paid
16 under the table, and you sometimes make statements
17 about people based upon your suspicions without any
18 evidence; correct?

19 A. Always I make a question when the
20 situation is unexplained in a large unethical way,
21 yes.

22 Q. I am showing the witness what has
23 been marked for identification as SK-2348 and 2349,
24 the first page is an English translation of the
25 second page, which is a letter on the letterhead of

1 Renato Guimaraes

2 missing five aviation firms from Miami.

3 (Insert)_____.

4 (Insert)_____.

5 (Insert)_____.

6 (Insert)_____.

7 (Insert)_____.

8 Q. The next paragraph says, "All of the
9 families I have spoken to agreed to change in
10 representation, almost all the families are
11 accepting the replacement."

12 How many families did you speak to?

13 A. How many I talk with?

14 Q. Yes, to make a change in
15 representation?

16 A. At that time, maybe not too many,
17 eight, ten, twelve, six, I don't recall how many.
18 Not a big number.

19 Q. And all of the families you had
20 spoken to agreed to replace Speiser Krause; is that
21 correct?

22 A. No, some ask, or their attorney ask,
23 some time to decide, let's see what happens, the
24 families make no decision yet. It was a twilight
25 zone yet, and not easy yes or no.

1 Renato Guimaraes

2 Q. Certainly the four families that went
3 to Herman & Mermelstein, they were part of the
4 group that you advised to --

5 A. They followed my duties.

6 Q. They followed your advice?

7 A. My duty to advise them.

8 Q. And then there's an additional four
9 families now that are with Walter Lack's firm, they
10 also followed your duties --

11 A. No, I think by the time -- I don't
12 think Walter Lack has too many.

13 Q. He has eight?

14 A. Herman -- I think it's the same
15 group, when Herman give up, they move to him.

16 MR. BERMAN: Counsel, my
17 Portuguese is not too good, but there
18 appear to be things in the Portuguese
19 letter that are not in the English
20 version, there appears to be omissions,
21 it's not verbatim.

22 MR. APUZZO: I didn't say it was
23 verbatim, I'm asking questions about the
24 letter.

25 MR. BERMAN: I'm just pointing

1 Renato Guimaraes

2 that point with Speiser Krause, not good.

3 Q. Did the OAB report Speiser Krause for
4 committing a crime?

5 A. Yes, sir. As I told you, Bar
6 Association Sao Paulo approved my duties and
7 approved the draft, three of them to the, again, to
8 the prosecutor, federal prosecutor in Sao Paulo,
9 U.S. Consulate and to airport police to take care
10 of Speiser Krause because of this crime according
11 to Bar Association there.

12 Q. Just one final question here if I
13 can. Walter Lack now represents eight clients,
14 correct, eight of your clients?

15 A. In California?

16 Q. Yes.

17 A. I think nine.

18 Q. Nine, there's a new one that's coming
19 in, yes, we don't have the name yet?

20 A. I know the name.

21 Q. What's the name of the new one, the
22 latest one?

23 A. Vanessa, and her orphan Pedro, Pedro
24 the little boy.

25 MR. APUZZO: I thank you for that.

1 Renato Guimaraes

2 So, my question, again, those
3 settlements were not declared or judged to be a
4 nullity; correct?

5 A. That's correct, they just reject in
6 the beginning.

7 Q. Now, in point number two, you say
8 that "The Brazilian Bar Association, on account of
9 these evidences decided that foreign professionals
10 have entered Brazil in order to exercise advocacy
11 in an illegal manner." Then it continues on, "I
12 grant with no doubts, be executed on the Brazilian
13 Bar Association's side, it is already null."

14 You're referring here to the
15 settlement agreements being null according to the
16 Brazilian Bar Association?

17 MR. BERMAN: Object to the form.

18 Q. Are you referring to the settlements
19 here?

20 A. Yes, and I refer to the three
21 approved drafted letters I mentioned to you from
22 the Sao Paulo Bar to the U.S. Consulate and the
23 airport police.

24 Q. Do you have copies of those letters?

25 A. Yes, I am sure it's here, I'm sure,

1 Renato Guimaraes

2 very important ones from the beginning.

3 Q. So, you have copies of these letters
4 but they were never sent, you said?

5 A. Yes, never sent by the Bar, yes, I
6 do.

7 Q. But they sent you copies?

8 A. Yes. It's a proceeding there, I'm
9 meeting.

10 Q. So, this last item, "The Federal
11 Police and the Attorney General's Office of the
12 Republic shall receive within some days OAB's
13 official letters in order to act against the SK's
14 scheme against the families."

15 Those are the letters that you were
16 referring to that were never sent; correct?

17 A. That's correct. It was approved but
18 never sent. And this part of my defense which was
19 approved by 27 to zero.

20 Q. And when you refer to the scheme of
21 Speiser Krause, what did you mean by that?

22 (Whereupon the interpreter
23 translates.)

24 A. Well, understand not formal but to
25 reach a result which is not made by regular or

1 Renato Guimaraes

2 my 26 and my 65 family for money, and so forth.

3 Q. I'm going to show you what's been
4 marked as Exhibit K, and this is Bates stamped
5 SK-2925, 2926. It is a letter in Portuguese and
6 it's dated 22nd May of 2001 on the letterhead of
7 Renato Guimaraes, Jr.

8 Can you identify this letter?

9 (The witness examines document.)

10 A. Yes, it's mine, yes, sir.

11 Q. And who's it addressed to, who did
12 you send this letter to?

13 A. I don't remember the name but it was
14 of course the criminal public prosecuting charge of
15 this case.

16 Q. And is this a criminal complaint that
17 you filed against Speiser Krause?

18 A. No, it's not a complaint, it's
19 information for the D.A. office.

20 Q. And it was complaining about Speiser
21 Krause's --

22 A. Complaining, yes, not technically a
23 motion, say so.

24 Q. And what crime did you state in the
25 body of this letter that Speiser Krause committed?

1 Renato Guimaraes

2 A. I start referring to the Veja
3 Magazine in the third or fourth paragraph, say as
4 Veja published some weeks ago Speiser Krause
5 betrayed the families. That's a crime, you are not
6 supposed to give to another party a document, you
7 are not supposed to change the truth, that's a
8 crime, that's what I am referring to.

9 I ask the third criminal court in
10 Campinas, Speiser Krause make falsehood by taking
11 out my name on the about 31st page for retainer
12 agreement with the families. And that's another
13 crime, you are not supposed to fabricate
14 documentation by taking somebody else's name. And
15 that's two of them. Article 344, Penal Code.

16 Then, second paragraph on the second
17 page, I refer again to 65 families of absolutely
18 identical contract, and that they reprint the first
19 page without my name on it.

20 Then I say at least intellectual, not
21 saying they ask computer, the mind, to take my name
22 off was to coerce me, to force me because of the
23 documentation falsehood to agree with them. Things
24 like that.

25 Q. That's sufficient, thank you.

1 Renato Guimaraes

2 Brazilian. And he promised but the man above him,
3 the director, never answered to me.

4 Q. Basically, if I could sum it up, you
5 were saying Speiser Krause was concealing the
6 evidence that you needed in Brazil; correct?

7 A. Yes. Later on they produce in Brazil
8 evidence.

9 Q. All right. The next one, this is
10 Exhibit M, it's Bates stamped SK-2938 through
11 sk-2941. It's a letter in English on the
12 stationery of Renato Guimaraes, Jr. As best I can
13 discern the date, it's at the end, which says Miami
14 Super Ball Day, 2004, so I would imagine this is
15 sometime in January of 2004?

16 MR. BERMAN: End of January,
17 beginning of February.

18 Q. Do you recognize this letter, it's
19 directed to ear Mr. Einhorn, I assume it was dear
20 Mr. Einhorn, do you recognize this letter?

21 (The witness examines document.)

22 A. More than that, I recognize one of
23 the attorneys in Miami, so please put on the list.
24 I don't know the whole name of the firm but I had
25 been personal with him, he showed interest, and so

1 Renato Guimaraes

2 forth, I remember that.

3 Q. And Mr. Einhorn, do you know his
4 first name?

5 A. No. And you're correct again, it's
6 dear, I made a mistake.

7 Q. I understand.

8 In the very first paragraph of this
9 letter after you say, "We have great news from
10 Brazil," you say, "The Attorney General's office
11 shall direct sometime during this February a police
12 investigation against Arthur and his son Leigh
13 Ballen, lawyers with Speiser Krause, for having
14 charged and unilaterally collected or are still
15 charging and unilaterally collecting or trying to
16 charge and to collect as if their attorney rights
17 U.S. dollars \$982,686.81 as a legal fee due to
18 Speiser Krause by 26 families when, in fact, the
19 families already had paid years before the very
20 same fee to the only legitimate creditors: Their
21 Brazilian attorneys, the ones who worked to obtain
22 to the families the so-called anticipatory, partial
23 awards from several TAM lawsuits or originate
24 solely in Brazil." The rest is not consequential.

25 So, in this letter, were you saying

1 Renato Guimaraes

2 that Speiser Krause is guilty of civil theft?

3 (Whereupon the interpreter
4 translates.)

5 MR. BERMAN: I object to the
6 form.

7 A. Well, technically, it's not theft but
8 roubo, in Brazil is something in the arm,
9 violence. That's a bad word if it's here, I don't
10 think it's here.

11 Q. If you just look at the next single
12 line over here which is after the next paragraph,
13 "I do not know in American law, but this civil
14 theft or larceny in Brazil is a very serious
15 crime."

16 A. It is.

17 Q. So, were you not saying that Speiser
18 Krause was guilty of a series theft?

19 A. Well, first you gave me a technical
20 name in Brazil which is assault, that's a roubo,
21 it's different, just the exact same point Mr.
22 Berman acquired two days ago of Mr. Lear, you are
23 charging, you, Speiser Krause for the duty --

24 Q. I'm not asking for an explanation of
25 this, I just want to know if in this statement here

1 Renato Guimaraes

2 you're saying that Speiser Krause was guilty of
3 theft.

4 MR. CHASE: Miss translator, we
5 have a distinction in the United States
6 between robbery which involves physical
7 violence or a threat of it and simple
8 theft which is taking of another's
9 property without the threat of violence,
10 and I believe that's the distinction.

11 THE INTERPRETER: But threat is
12 roubo in Portuguese.

13 Q. Can you answer that question, these
14 are your words, is that correct, you use these
15 words?

16 A. Yes, I use.

17 Q. And you said that in Brazil the
18 actions of Speiser Krause is civil theft or theft
19 or larceny?

20 A. I don't know if it's correct
21 technically in American law, larceny, but what I
22 mean is inappropriate charge.

23 Q. But in Brazilian law, it's theft;
24 correct?

25 A. No, it's not theft technically.

1 Renato Guimaraes

2 Q. Did you write these words?

3 THE INTERPRETER: It's undue charge.

4 Q. Did you write these words to Mr.
5 Einhorn?

6 A. I did.

7 Q. My question is, either in Brazil or
8 the United States, was Speiser Krause ever
9 convicted of theft?

10 A. No, no, it's not in -- I forgot to
11 put this, among the wrongdoing Speiser Krause
12 commit in Brazil, it's not even in Jabaquara, I'm
13 sure I did not put.

14 Q. In Brazil or the United States, were
15 they ever convicted of theft?

16 A. As far as I know, never. It's not
17 theft it is undue --

18 Q. Were they ever charged with a crime,
19 formally charged?

20 A. No. The prosecutor request more
21 additional evidence and I don't know yet if the
22 judge approve to return it.

23 Q. Turning the page, it says once more
24 "Speiser Krause made an enormous unique mockery
25 justice at the cost of the future of the families."

1 Renato Guimaraes

2 A. Yes.

3 Q. "By its criminal omission (failure to
4 disclose a material fact)" and it goes on.

5 Now, my question is, was Speiser
6 Krause ever convicted of a criminal omission?

7 A. No, I'm not saying that, I say they
8 commit it.

9 Q. So, they were never arrested for a
10 criminal omission?

11 A. No, they just did not discharge the
12 proper duty as they should.

13 Q. I'm going to show you what has been
14 marked as Defendant's N for identification, please
15 take a look at this, Mr. Guimaraes.

16 (The witness examines document.)

17 Q. N, like Nancy is designated SK-2953
18 through 2986. It's a letter on Dr. Guimaraes'
19 letterhead, and it appears to be dated February
20 28th of 2002. The letter or the document is in
21 Portuguese and it's followed by what appears to be
22 2985, SK-2986, which are also letters on Renato
23 Guimaraes' letterhead.

24 Mr. Guimaraes, do you recognize this
25 document?

1 Renato Guimaraes

2 (The witness examines document.)

3 A. Yes, sir, I do.

4 Q. Can you just describe briefly what is
5 this document?

6 A. This is, I believe, the very first
7 lawsuit our new organization created after Sandra
8 Assali did not discharge her presence in Abrapava.
9 We try to help these people, this is a class action
10 where we ask the judge, another judge in Jabaquara,
11 I'm sorry, not Jabaquara in the Forum Central to
12 both, to Speiser Krause to be liable for the coming
13 settlement and, I recall, if I may advance it, this
14 case was dismissed, not on the merits only because
15 it was a personal right, so for lackness of
16 standing, a no government organization will have
17 rights or standard to ask for something private
18 which will be the damage of the family.

19 Q. And when this lawsuit by the
20 association was dismissed, did any of the families
21 initiate their own individual lawsuits?

22 A. If they wish by private lawsuit.

23 Q. But did they do that?

24 A. Not of my knowledge, none of them
25 did.

1 Renato Guimaraes

2 (Whereupon the interpreter
3 translates.)

4 A. They were all in favor of their
5 money, they don't care of Renato's idea to reform
6 the world, I need the money for my kids and, yes,
7 they accept the settlement.

8 Q. So, they didn't care about the
9 proceedings in New York, correct, they wanted the
10 money?

11 MR. BERMAN: Object to the form.

12 A. Yes, I think it's fair, they want a
13 solution for their economic.

14 Q. And the same for California, they
15 didn't care about the proceedings in California,
16 they wanted the money?

17 A. Yes, they say I want finished, I want
18 my money, forget about it.

19 Q. Number four, you said "The Brazilian
20 Bar already took proper steps so the federal
21 prosecutor can formally charge Speiser Krause in
22 Federal Court with federal felony of illegal
23 exercise of the legal profession in Brazil
24 according to the Brazilian Penal Code."

25 Question, was Speiser Krause ever

1 Renato Guimaraes

2 convicted of this charge of a federal crime?

3 A. They did not, even was indicted
4 because the judge said we have no jurisdiction over
5 these people and I lost. I appeal saying they made
6 it a crime in U.S., probably taking out my name of
7 the contract but the damage is here in Brazil and I
8 lost four to one.

9 Q. In five you say, "Brazilian Bar also
10 took measures such as in the original, so that the
11 Brazilian State Department officially communicate
12 the U.S. State Department to take appropriate
13 actions in view of the criminal activities
14 committed by Speiser Krause in Brazil and against
15 the legitimate interests of the families of TAM
16 tragedy."

17 My question is, what measures were
18 taken by the Brazilian Bar Association?

19 A. As I told you, the Brazilian Bar in
20 Sao Paulo approve also a letter against the further
21 entrance in Brazil of Speiser Krause and that this
22 was made by the federal prosecutor, yes.

23 Q. And you were the person who brought
24 this to the attention of the Brazilian Bar?

25 A. Yes, to the Bar, yes.

1 Renato Guimaraes

2 Q. Look at number six, "The attorney
3 general of the State of Sao Paulo, the public
4 prosecutors and judges in those courts in which I
5 act in these lawsuits also are fully aware of these
6 illegal activities practiced by Speiser Krause in
7 Brazil."

8 Now, my question is, did you also
9 make the attorney general, the public prosecutor
10 and the judges aware of the crimes of Speiser
11 Krause?

12 A. The attorney general representative
13 in that chamber of the judge, yes.

14 Q. But you were the person who made them
15 aware of these crimes?

16 A. That's right.

17 Q. Look at paragraph nine, the next
18 page, item four of Mr. Gerard R. Lear's affidavit,
19 "At least to the Brazilian ethical and legal
20 standards of a code of responsibilities of the
21 attorneys not only a plenty act of malpractice but
22 to be exact, an astonished case of high legal
23 treason in court because the nature and the scope
24 of such a statement only could be reasonably
25 conceived to be expected from a Northrop lawyer

EXHIBIT "A.1"

1 Renato Guimaraes

2 Lloyds of London, Lino, L-I-N-O, Pereira
3 P-E-R-E-I-R-A, D-A-S-I-L-V-A. Lino is an attorney
4 for Lloyds of London. So, every accident in the
5 airplane in Brazil he is defendant, whoever, Varig,
6 TransBrazil and TAM. He complained also against
7 me. And I was cleared, the bar did not accept, the
8 merits say no, Renato behave very ethically in both
9 sense, and both did not appeal to the high level of
10 Brazilian bar.

11 Q. Let's go to Mr. DaSilva's complaint,
12 when did he make that complaint about you?

13 A. When I start -- It was after the Time
14 Magazine in Brazil, Veja Magazine public two page
15 star with my three declarations, Speiser Krause is
16 betraying the family. Soon after that they all
17 together went to the bar association and made a
18 complaint against me.

19 Q. What's this magazine?

20 A. Veja, V-E-J-A.

21 Q. And you contributed to this article
22 in Veja?

23 A. Yes. It's not an article, it was a
24 story about my big picture on one page and an
25 attorney representing, not Sampaio, an attorney

1 Renato Guimaraes

2 representing Speiser Krause, and say there is a
3 huge problem amongst attorneys about the fees. And
4 they put my signature, they took a picture of my
5 signature and print there saying Speiser Krause is
6 betraying the families, they are protecting TAM and
7 Northrop, three times, and the quotation marks.

8 And one week later, exploded, three
9 or four complaints against me, to the bar. Lino,
10 Sampaio, and some clients from Varig and Sandra
11 Assali. I was clear from all them, only Sandra
12 appeal.

13 Q. Do you have copies of these
14 complaints as part of your records?

15 A. According to the Brazilian law, until
16 the end, it's not published to protect the
17 attorneys in the presumption of innocence. I can
18 not, according to the Brazilian law, to show you
19 either the complaint or the decision made in favor
20 of me. But those people published, Sandra Assali
21 published the complaint so I'm suing her in the
22 court, she broke the law.

23 Q. Were you called upon by the OAB to
24 defend yourself against these complaints?

25 A. Yes, I had to defend myself.

1 Renato Guimaraes

2 Q. And how did you know that there was a
3 complaint if it's not --

4 A. Oh, the bar sent a notification to
5 me, hey, there is complaint here, the deposition is
6 here, you have, say, 15 days to present your
7 defense. And I did. And I success.

8 MR. APUZZO: Counsel, I'm going to
9 call upon you to please furnish copies of
10 these complaints the witness is
11 testifying to.

12 (Production Request.)

13 MR. RIGUERA: Just to clarify, he
14 just said they are confidential under
15 Brazilian law to some extent.

16 MR. APUZZO: He said until the
17 case is closed, he said three of them are
18 closed.

19 MR. RIGUERA: Maybe clarify it or
20 I can discuss it with him off the record.

21 Q. Until such time the case is closed
22 and you're cleared, those documents are confidential?

23 A. Right.

24 Q. After the case is closed and you are
25 cleared, they're no longer confidential?

1 Renato Guimaraes

2 A. Right.

3 MR. APUZZO: We would like to have
4 copies of the complaint and your response
5 to the complaint.

6 (Production Request.)

7 A. I can give you from the complaint who
8 is closed. The others are together because as part
9 of my defense I told the bar these are not three
10 cases, just one. They made it different issues but
11 they are all interlocked. And they agreed with me,
12 so they put all together. Even though I am anxious
13 to publish this, I can't because the bar says well,
14 it's over, but it's still together with the Assali,
15 so I have to wait.

16 Q. Which complaint is completed, over,
17 you said there's one which is completed?

18 A. The one completed I will give to my
19 attorney. The Varig case is the one that is
20 completed, separate issue.

21 MR. APUZZO: Counselor, since he's
22 eluded to the fact that he does have
23 these complaints in his office, whether
24 or not he's under restrictions by the
25 Brazilian Bar Association not to release

1 Renato Guimaraes

2 them, the fact is he still has these
3 complaints.

4 What we're going to do is call
5 upon you for the production of these
6 complaints and you can mark them
7 attorneys eyes only, strictly
8 confidential, or however you want to mark
9 them, but we still are requesting these
10 documents.

11 (Production Request.)

12 Q. Now, Dr. Guimaraes, as I understand
13 your testimony, you said Sandra Assali published
14 her complaint?

15 A. Yes, she did, she could not put my
16 name.

17 MR. RIGUERA: Wait for a question.

18 Q. Where did she publish that complaint?

19 A. Internet. And she tried to do
20 another web site. They tried Veja, Veja refused,
21 so they sent it to another web site on the
22 computer. They refused and told me that this lady
23 is behind you and doing that, so I went to the
24 court against her.

25 Q. Did you make a copy of the complaint

1 Renato Guimaraes

2 that Sandra Assali published on the internet?

3 A. Yes, I did.

4 MR. APUZZO: We'll call upon
5 counsel to please produce a copy of that.

6 (Production Request.)

7 Q. With respect to the article in Veja,
8 did they interview you for information?

9 A. Yes. An attorney in Rio said there's
10 something wrong, I don't understand, talk to
11 Renato. I explained my position. But they have
12 different sources, I never gave my letter to the
13 family, some family gave to Veja.

14 Q. So, in other words, you didn't give
15 them your signature?

16 A. No, but I give it to the whole 65
17 families, somebody gave to Veja.

18 Q. And there was a telephone interview
19 with Veja?

20 A. Yes. Never personally. Well, they
21 send a photographer to me, just took the picture,
22 did not make an interview.

23 Q. Do you remember the name of the
24 person from Veja who interviewed you?

25 A. It's in the magazine. Yes, I know

1 Renato Guimaraes

2 fee, there is no fee there for you to share;
3 correct?

4 A. As long as Speiser Krause involved,
5 yes, but I have an opportunity to have it from
6 Walter Lack.

7 Q. But not from Speiser Krause?

8 A. No, of course.

9 Q. So, are we correct that these ten
10 clients, total of ten clients, they discharged
11 Speiser Krause but they did not discharge you?

12 A. No, they are the most trusted family,
13 they trust me, it's a big responsibility.

14 Q. I'm sorry?

15 A. These families are very very tied to
16 me.

17 Q. So, they did not discharge you,
18 that's what my question was?

19 A. No, they did not.

20 Q. This is Exhibit 8.

21 (Document handed to the witness.)

22 Q. Have you seen this letter at any
23 time?

24 A. No. It's not a surprise for me but I
25 never read. I thought somehow along the line they

1 Renato Guimaraes

2 to the clients?

3 Q. No, I'm going to go on to the next
4 one.

5 When you refused to assist the TAM
6 clients in affecting the settlement agreements in
7 the Brazilian courts, when you did that, were you
8 acting contrary to Speiser Krause's interest?

9 A. Obvious.

10 Q. Were your actions in refusing to
11 assist the clients in accepting these settlements,
12 were these actions contrary to the objectives that
13 were made known to you by the TAM clients?

14 THE INTERPRETER: Repeat the
15 question.

16 (The question referred to was read
17 back by the Court Reporter.)

18 A. Yes, they want the money, I want the
19 rule.

20 Q. And in the same sequence, were your
21 actions also contrary to the objectives of Speiser
22 Krause?

23 A. Yes.

24 Q. What action did you take to prevent
25 the clients from accepting the settlements which

1 Renato Guimaraes

2 Speiser Krause proposed to them?

3 A. After I have no chance to convince
4 them anymore, I went to the attorney general
5 office. And by reading, I say something wrong has
6 happened here, and I want to get out of my duties.
7 It's a public interest, I go to my limit of my
8 duties. So, the attorney general should take care
9 of it, and many agree with me.

10 Q. Did you bring any law action in the
11 Brazilian court to nullify the settlement
12 agreements?

13 A. I don't think we call lawsuit, it's a
14 kind of notification.

15 Q. Is the notification filed in any of
16 the Brazilian courts?

17 A. It's not the court itself, it's a
18 clerk, a department of the court, it's not in
19 litigation yet, it's a preparation, say so.

20 Q. When you met with the attorney
21 general, what did he say to you and what did you
22 say to him?

23 A. Sir, on this issue, I never talk
24 personally like us, we are doing now, with the
25 attorney general, I just filed my complaint, say

1 Renato Guimaraes

2 so, to the offices so the clerk of the attorney
3 general give a receipt and they made a decision.
4 It's not a personal meeting, say so, it's a written
5 motion to the attorney general.

6 MR. APUZZO: Mr. Guimaraes'
7 counsel, if they will please get us
8 copies of these documents that he sent to
9 the attorney general.

10 (Production Request.)

11 MR. RIGUERA: Okay.

12 MR. APUZZO: And also copies of
13 the documents which were filed with the
14 clerk of the court to nullify the
15 settlement agreement.

16 (Production Request.)

17 MR. RIGUERA: From my review, my
18 recollection, some of that may have been
19 produced already. We'll do a search to
20 make sure we haven't missed anything, and
21 if we did, we'll provide it.

22 Q. Exhibit 11 is a letter, the first two
23 pages which are designated as Bates stamped
24 SK000620 and 621 appear to be a translation of the
25 document following which is SK000622 and 623. And

1 Renato Guimaraes

2 which we produced, so I don't think
3 that's accurate either.

4 Q. Is it your opinion that the English
5 translation of these documents is not correct?

6 A. I have a presumption it's correct,
7 but I'm not experienced with word by word.

8 Q. That's all I'm asking you. If we had
9 to characterize what these letter were saying, are
10 these letters from you to the clients advising them
11 to reject the Speiser Krause settlements?

12 A. This letter is direct to the clients
13 and their attorneys because many come to me and to
14 other attorneys, and it's my duty to have a summary
15 what's going on.

16 We want in Jabaquara two million
17 reais. Part of it is enforceable right now. And I
18 was in New York last month and --

19 MR. RIGUERA: Renato, he's not asking
20 you to summarize the letter. Listen to
21 the question.

22 Q. If you had to say the purpose of
23 these letters, to characterize these letters, did
24 you tell the clients in these letters that they
25 should not accept the settlement proposed by

1 Renato Guimaraes

2 Speiser Krause?

3 A. Yes. I think the main point is here,
4 my recommendation to not sign any agreement with
5 Speiser Krause which is, again, illegal, the same
6 story of illegal agreement from Lloyds of London in
7 Varig case. Every case they make tricks on this.

8 In this case here they signed
9 \$140,000 agreement well before Speiser Krause came
10 along. And I succeed in all case but one to avoid
11 the \$140,000 so, don't make mistake again, let's go
12 for it. That's it.

13 Q. So, you notified the families that
14 they could receive much more if they don't accept
15 the settlement from Speiser Krause and they wait
16 for the judgement in Jabaquara; correct?

17 A. It's two pages long. I have all
18 information for their independent judgement, so I
19 did not impose it, I did not direct it. But the
20 underlying is this: It's a big confusion, you have
21 more chance, I was in New York, Frizzel told me we
22 have a 75 per cent chance. So, smart clients will
23 say wait a minute, I think I better talk with
24 Renato, things like that.

25 So, it's not a notification, it's a

1 Renato Guimaraes

2 (The witness examines document.)

3 A. Yes.

4 Q. And this is a letter that you were
5 the author of?

6 A. Yes, the original in Portuguese, yes.

7 Q. And you sent this to your clients and
8 colleagues?

9 A. Yes.

10 Q. And your ex-clients?

11 A. That's true.

12 Q. In this letter, were you asking your
13 client to fire Speiser Krause?

14 A. That's correct, to change, to replace
15 by --

16 Q. All right, that's not sufficient. I
17 have to move along because we want to finish this,
18 Dr. Guimaraes.

19 MR. RIGUERA: He's done with this
20 document.

21 MR. APUZZO: I can spend an hour
22 or two on this, but I'm not going to,
23 your attorney has to catch a plane.

24 Q. Besides for the lawsuits that you
25 described that you brought against your ex-clients,

EXHIBIT “A.2”

1 Renato Guimaraes, Jr.

2 Varig case, also?

3 A. No, but they inject themselves and
4 made the families to fire me.

5 Q. On the Varig case?

6 A. Yes, sir. And took all my money.

7 Q. Did you ever make a claim against
8 Speiser & Krause for what you say they did on the
9 Varig case?

10 A. A complaint against them, legally,
11 no. I did my best in Brazil, but since I am a
12 foreigner not yet, no.

13 Q. When did your clients receive money
14 on the Varig case?

15 A. Could you repeat, please?

16 Q. When did your clients receive their
17 money on the Varig case?

18 A. After they fired me, even though
19 Varig has agreed with the proposal I present with
20 the family to Varig legal department. And a few
21 days, or weeks, after that I receive the
22 information, the president of Varig has agreed, was
23 reasonable and they accept, but the case could not
24 move on. Then, somehow, Lloyd's of London furnish
25 the information of my clients, and that's the end

EXHIBIT "A.3"

1 Gerard Lear

2 United States, you have no jurisdictional issues,
3 it is what it is, you try to get as close to that
4 with any case you have.

5 Q. So, if you're in the mid Atlantic --

6 A. That's just a term. I'm not going
7 into whatever mid Atlantic is, it's a term you use,
8 we will do our best to get maximum value on the
9 case based on all the factors.

10 Q. What did your firm do to determine
11 the value of each one of the plaintiffs' cases so
12 that you could inaugurate settlement conversations?

13 A. Well, Leigh went and gathered all the
14 economic information he could, and the family and
15 damages information that was available from the
16 individual families, and tried to put together --
17 give us, give me, an idea of what the total value
18 of these cases might be.

19 And that took some time, it took
20 several months to do.

21 Q. Where is that information that Leigh
22 gathered and compiled, because it has not been
23 produced?

24 A. I thought it was produced, I thought
25 I saw it. I have to look again, I thought there

1 Gerard Lear

2 was a path.

3 Q. What was produced is what we marked
4 for identification at the depositions, which were
5 letters with some grids attached, as well as
6 Exhibit 59, which had a spreadsheet of some
7 information. But what wasn't produced was what
8 Leigh said was the transcription of his notes onto
9 the Speiser Krause system that he obtained from
10 each family member.

11 A. That may be what it is --

12 MR. APUZZO: Objection. Is that a
13 question?

14 Q. Comma, do you know where that stuff
15 is?

16 A. Right at this moment, I don't.

17 MR. APUZZO: Objection to form,
18 but you've answered.

19 A. I have an idea what it is. It was a
20 package put together for my benefit, trying to lead
21 up to any conversations I might have with the
22 insurers because insurers always want to know what
23 is this going to cost me. That's their first
24 question, how much am I going to have to pay to get
25 a settlement. If I say I'd like to settle, I've

1 Gerard Lear

2 got 50, 60 cases.

3 Q. They're also going to want to know
4 the elements of the damage for each particular
5 plaintiff?

6 A. That could be a factor.

7 Q. Was there ever a mediation of these
8 cases?

9 A. With a mediator?

10 Q. Yes, sir.

11 A. No.

12 Q. Did each case have a separate file?

13 A. Yes.

14 Q. Would each file contain information
15 on the family that file was open for?

16 A. I believe it would, sure.

17 Q. Would each file contain the economic
18 and non-economic damages as it related to that
19 family?

20 A. I'm not sure how Leigh did the
21 filing. I don't do the filing, but I would think
22 in order to keep any degree of context to it, he'd
23 know which cases are which, we'd have separate file
24 numbers for each case.

25 Q. Did they have separate files?

1 Gerard Lear

2 A. Yes.

3 Q. What would be contained in a file?

4 A. Anything to do with the case.

5 Q. That would include, then, the notes
6 relative to the economic and non-economic damages
7 suffered by that family so you can prepare a damage
8 package and analysis for settlement, would it not?

9 A. Not necessarily, depends where we
10 were in the case. What Leigh put in it, I couldn't
11 tell you, I didn't do Leigh's work. I knew what
12 the results were but I didn't oversee the fact
13 where's this piece of paper, that piece of paper.
14 Each file may contain different items.

15 Q. You reviewed his work?

16 A. I reviewed the results of his work, I
17 didn't sit by his desk.

18 Q. One of the things you asked him to do
19 was give you an analysis of the damages of each of
20 the plaintiffs?

21 A. I knew that. I was aware of the
22 families, how many children, what their economic
23 situation was, their earnings, the best we could
24 ascertain.

25 Q. For the record, those are the

1 Gerard Lear

2 documents we've requested. That is the earnings
3 per family, the ages of the children, the claims by
4 the relatives that survived and, I guess, based on
5 what I heard earlier, some potential mistress
6 claims. Was that stuff ever put together and
7 presented to you for your use in settlement
8 negotiations?

9 A. I looked at the result of that. I
10 don't recall looking at the individual itemizations
11 that went into the package.

12 Q. So, what was actually given to you to
13 look at?

14 A. Probably a synopsis of each family.

15 Q. Is that in the form of a memorandum
16 per family, or what?

17 A. It may have been a compilation. It
18 may not have been per family. It may have been a
19 package where it had the families itemized with the
20 information we would need that we could then go to
21 McGilchrist or Mirable, M-I-R-A-B-L-E, and try to
22 answer their question as to what was the universe
23 that we were dealing with.

24 Q. Where is that documentation?

25 A. Right now, I don't know.

EXHIBIT "A.4"

2 Q. Did Arthur or Leigh report to you
3 since you were the person in charge of settlement
4 discussions any authority of the settlement
5 parameters that they had obtained or discussed with
6 the Brazilian plaintiffs prior to the time that
7 settlement discussions were inaugurated?

8 A. I don't recall it.

9 Q. Did you discuss the parameters of the
10 anticipated settlements with any of the Brazilian
11 attorneys prior to the time that you inaugurated
12 settlement discussions on behalf of the Brazilian
13 plaintiffs?

14 A. I didn't have any anticipated
15 settlements until I talked to the defendants and
16 found out whether or not they would first make
17 offers and, if so, how much.

18 Q. Did you discuss the expectations of
19 recovery with any of the Brazilian lawyers or any
20 of the Brazilian clients prior to inaugurating
21 settlement discussions?

22 A. I don't know what you mean by
23 expectations, but there were no discussions I had
24 with anybody about that.

25 Q. So, you gathered the information

Gerard Lear

2 through Leigh Ballen and then you took that
3 information and used your judgement in conducting
4 settlement discussions; is that accurate?

5 A. That's probably correct.

6 MR. BERMAN: Off the record.

7 (Off the record at 12:25 p.m.)

8 (Resuming at 12:35 p.m.)

9 Q. I'd like to show you what's been
10 Bates stamped SK1192 through SK1213, which are the
11 documents that your counsel identified this morning
12 was the foundation for the demand that you made,
13 and ask if you can identify those documents.

14 (The witness examines document.)

15 A. Yes, those are the documents.

16 MR. BERMAN: Could we put an Exhibit
17 number on those and then copy them?

18 MR. APUZZO: Go ahead.

19 MR. BERMAN: Let's mark these
20 then.

21 (Speiser Krause Valuations, marked
22 for identification, Exhibit 80.)

23 Q. I'd like to show you Exhibit 80, sir,
24 and ask whether or not those were the documents
25 that you relied on to formulate your demands for

Gerard Lear

1 Q. At any point?

2 A. I'm not sure we needed to. There
3 wasn't a requirement to get an actuary, we knew the
4 ages, income.
5

6 Q. Did you know the medical --

7 A. We did, Leigh would discuss with me
8 any special medical conditions, yes.

9 Q. Were their family means discussed
10 with you?

11 A. Yes. We were aware a lot of families
12 were in desperate straits and that was the reason
13 we were pushing so hard, because of the inflation
14 in Brazil, we were doing our best to see if we
15 could help them.

16 Q. Are there any other communications or
17 conversations that you had with any of the
18 Brazilian families that you haven't told us about
19 as best you can recall?

20 A. If there are, I can't think of them.

21 Q. Are there any other conversations or
22 communications that you had with Mr. Guimaraes that
23 you haven't told us about?

24 MR. APUZZO: Asked and answered, but
25 answer again.

EXHIBIT "A.5"

1 Gerard Lear

2 amount, it's all in writing.

3 MR. BERMAN: I've seen those, but
4 I've also seen some reference to a more
5 fixed group of perhaps others.

6 Q. But you'd be speculating to anything
7 other than the ones represented by Walter Lack?

8 A. There are others but I cannot sit
9 here and tell you what position every one of those
10 is in because they're not represented by Mr. Lack,
11 they nominally are still represented by us but, for
12 one reason or another, either don't want to take
13 the settlement, some of them still rely on
14 Jabaquara, on Mr. Guimaraes, and the potential for
15 Jabaquara, and others of them, as you say, have
16 family squabbles. And the fact that the defendants
17 have at least implied to me, if not said, they're
18 not paying anymore money until all this becomes
19 clear, whatever that all is.

20 Q. By the defendants, you mean?

21 A. Mr. Bouscaren.

22 Q. The insurers?

23 A. Correct, right. Grumman, for the
24 most part. I haven't had many conversations with
25 London because they have pulled the plug on the

Gerard Lear

most part.

Q. I just want to, if I could, understand the relationship interfered with, was it the retainer agreement that you're claiming was interfered with?

A. No, the retainers we already had.

Q. Was it the settlement?

A. The settlement, no, the settlement wasn't interfered with. The time of the settlement was April 2000, and Mr. Guimaraes at that time was being helpful.

Q. Was it the relationship with the client in general?

A. After the Jabaquara, yes.

Q. After the Jabaquara judgment came down?

A. Yes, then it was the relationship with the client, by us with the client, and there was an active role by Mr. Guimaraes in attempting to stop those people from accepting the settlement and also the allegations of criminal activity by us and having to negotiate the settlement.

Q. Thank you.

Have you met with each one of these

Gerard Lear

money, you can have criminal activity associated with it, house break-ins, kidnapping, especially down in that part of the world, even in the U.S., we're not immune. My advice is always keep your settlement confidential for that reason.

Q. Do you think clients take that advice?

A. No, but I feel better having told them what the ramifications are if you do that. It is a risk they take, a multi-million dollar settlement in a newspaper, trust me, families are not going to be pleased.

Q. Notwithstanding that, you wouldn't be surprised if these families spoke to each other about these --

A. Well, my understanding is that it was happening. And Renato, I know, published the Berliner settlement himself, which I'm told was three million dollars, I don't know, but that's my understanding reading some of Renato's letters.

Q. Didn't TAM publish their settlements?

A. I don't know. I read it in Renato's correspondence, I can't believe TAM would have done it, but you may know something I don't know.

1 Gerard Lear

2 Q. The eight.

3 A. I just have no knowledge of that.

4 Q. Did Dr. Guimaraes ever tell you that
5 the families' decision, those eight families'
6 decision, to not continue with Speiser Krause was
7 based on what Dr. Guimaraes said or did?

8 A. Well, certainly he recommended to
9 them that they not accept the settlement.

10 Q. Well, he can do that as their lawyer,
11 could he not?

12 A. He can do whatever he wants, it's
13 none of my business.

14 Q. He can, lawyers give clients advice,
15 right?

16 A. Whether -- and certainly in his
17 letters to the clients he related to them the
18 alleged criminal conduct by Speiser Krause, so what
19 influence that had on the clients, I guess is
20 between him and the clients.

21 Q. But you don't know?

22 A. I only know what I read.

23 Q. They could have been influenced by
24 many other things as you pointed out earlier;
25 correct?

1 Gerard Lear

2 you could not any longer cooperate with co-counsel?

3 MR. APUZZO: Objection, but answer
4 it if you can.

5 A. I don't think so.

6 Q. Did you ever seek an injunction
7 against Mr. Guimaraes to stop him from engaging in
8 any of these actions?

9 A. I don't believe we did, no.

10 Q. Prior to initiating this counterclaim
11 which came, I guess in 2007, had you taken any
12 action against him for these activities that he
13 engaged in many many years earlier?

14 A. I never had any intention of taking
15 action against Mr. Guimaraes until he filed a
16 lawsuit against us and it became known that he left
17 us with no options.

18 Q. Did you ever file a complaint with
19 the authorities alleging that Mr. Guimaraes'
20 complaint that he made against you was false?

21 A. Are you talking about the complaint
22 in this lawsuit?

23 Q. No.

24 A. What are you referring to?

25 Q. You indicated earlier that he said

1 Gerard Lear

2 you engaged in criminal actions, and maybe he did
3 that in Brazil, but did you ever file a complaint
4 with the criminal authorities alleging that Dr.
5 Guimaraes' complaint against you was false?

6 A. No, I didn't.

7 Q. Other than the letters that Mr.
8 Guimaraes wrote to the clients, do you have any
9 evidence to show that the clients were even aware
10 of the things that you claim the client did to
11 interfere with the client relationship?

12 MR. APUZZO: Objection to form.

13 Answer if you can understand it.

14 A. I don't understand it.

15 Q. Dr. Guimaraes wrote letters to
16 clients; correct? Other than the letters, there
17 are other things that you complain of that Mr.
18 Guimaraes did. Do you have any evidence that the
19 clients were aware of any of these other actions
20 undertaken by Dr. Guimaraes?

21 A. Several of the letters to the clients
22 list what he did.

23 Q. Do they list everything?

24 A. I don't know if it's everything, but
25 it's certainly enough.

1 Gerard Lear

2 A. Could be.

3 Q. There were problems getting TAM to do
4 what TAM was supposed to do even at the request of
5 their own insurance carrier, isn't that another
6 reason?

7 A. Possible.

8 Q. There were clients who wouldn't
9 settle under any circumstances, I believe you've
10 written in other letters, isn't that also true?

11 A. Not of these eight or nine, but there
12 are a couple in that category.

13 Q. And most of them did settle?

14 A. 45, I believe is the number I've
15 heard, or that have actually received their money.

16 Q. For which you have been paid your
17 full fee?

18 A. I assume so.

19 Q. Well, is there any reason you believe
20 you haven't been paid your full fee on those
21 settlements?

22 A. I'm just assuming that we've been
23 paid our fee.

24 Q. Now, if Mr. Guimaraes had cooperated
25 fully with you and effected the settlements on

1 Gerard Lear

2 those matters where you were joint counsel on, he
3 would have been paid a fee; correct?

4 A. I assume we would have -- Yes, if we
5 had managed to get this job done and with his
6 cooperation, I'm not dumb, certainly I would have
7 worked something out with Renato to compensate him
8 for that.

9 Q. So, it was in his economic interest
10 to cooperate with you and get these cases settled
11 so he could be paid a fee?

12 A. That's relative, it may have been in
13 his economic interest to push for Jabaquara because
14 maybe that was going to pay him more.

15 Q. And how long is Jabaquara from --

16 A. In my view, a long time.

17 Q. 10 years?

18 A. At least.

19 Q. So, it might be true that it would
20 have been in Renato's best interest from an
21 economic perspective to cooperate with you and
22 settle the cases on the terms that you negotiated,
23 isn't that true?

24 MR. APUZZO: Objection.

25 A. I guess you can argue that back and

Gerard Lear

forth but the facts speak for themselves, he did not cooperate. Why not, I don't know, if I'm wrong about Jabaquara, or something, I don't know.

Q. Did Dr. Guimaraes indicate that he was concerned that the widows and orphans were not getting enough money?

A. I got -- Relative to what?

Q. Relative to how much money he thought they should get, did he express that?

A. I'm sure he did.

Q. Is there anything wrong with him expressing it?

A. Not at all.

Q. Did Dr. Guimaraes indicate that expectations had been set higher based on earlier communications from Arthur Ballen with the plaintiffs thereby creating the belief in the plaintiffs that they would receive more than the settlement offers?

A. Well, 45 people accepted it and got their money, in fact, 54 accepted it and they didn't seem to have any problem with expectations, so I don't know. These are all just things you're throwing out, but I don't know the answer.

1 Gerard Lear

2 Q. You're an experienced lawyer,
3 sometimes people accept offers because they need
4 the money, even if they think the offers are
5 inadequate, isn't that true?

6 A. That can happen, it's part of life.

7 Q. How has Speiser Krause been damaged
8 by the actions of Mr. Guimaraes?

9 A. I already answered that this morning.

10 Q. Can you quantify it for me?

11 A. I did.

12 Q. You told me you didn't know?

13 MR. APUZZO: This is with reference
14 to the counterclaim?

15 MR. BERMAN: Yes.

16 A. We went over the numbers.

17 Q. What I understand from this morning
18 was that the numbers depended upon what ultimately
19 happens in California on the amount of your lien.

20 A. No, in fact, we told you it did not.

21 Q. It's irrelevant to the lien?

22 A. That's correct. We went over this.

23 Q. So, it's your belief that even if you
24 recover every penny of your lien that you still
25 have been damaged?

EXHIBIT "A.6"

1 Grumman?

2 A Yes, USAIG.

3 Q And what presentations were made by
4 your firm at the settlement meetings?

5 MR. APUZZO: Objection to
6 form.

7 Q What, if anything, did you present to
8 the TAM defendants in conjunction with the settlement
9 process?

10 MR. APUZZO: Okay.

11 A We made demands to them in writing on
12 all our cases.

13 Q What form did those demands take?

14 A Letters with a demand for each case.

15 Q Each case had a separate demand
16 letter?

17 A No. No, there was a master demand
18 letter with an individual demand for each case.

19 MR. BERMAN: Have those all
20 been produced?

21 MR. APUZZO: I don't know.

22 MR. BERMAN: I don't think so.

23 Q Are those records that are maintained
24 at Speiser Krause?

25 A Yes.

1 Q Who put together the individual
2 demand packages?

3 A Myself, in coordination with Gerry
4 Lear and information we got from Brazil.

5 Q What kind of information?

6 A Damage brochures, detailed damages
7 information, booklets that were prepared by Beatriz
8 Kopacek in Brazil.

9 Q Is she a lawyer?

10 A No.

11 Q What analysis was made of the
12 individual claims prior to presentation at a
13 settlement conference?

14 A The amount of the decedent's
15 earnings, the position they held, the age of the
16 decedent, the existence of children and their ages,
17 the existence of a spouse and his or her age and, of
18 course, applicable law that we felt could be applied
19 to the case in the various jurisdictions.

20 Q Was there a presentation made, a
21 Power Point presentation, graphs, charts? Did you do
22 anything like that?

23 A No. We made a written demand
24 discussing the basics of each case and then the
25 in-person discussions centered more on liability and

1 local attorney they might have, and oftentimes Renato
2 Guimaraes.

3 Q Now, was Mr. Guimaraes present at any
4 of these meetings with you, your father and the
5 families when there was no local attorney present?

6 A Yes.

7 Q So, Mr. Guimaraes, as of May 2000,
8 was still working with Speiser Krause; is that
9 correct?

10 A Yes.

11 Q Do you remember the order in which
12 you conducted the meetings?

13 A Which family went first?

14 Q Yes.

15 A I only remember that we started with
16 some of Renato's closest family contacts.

17 Q Why do you remember that?

18 A Because we got a very negative
19 initial reaction when they entered the room. They
20 had an obvious predisposition to news that they were
21 not yet supposed to have.

22 Q What do you mean by that?

23 A Arms crossed, look of frustration.
24 It was a new sentiment that we were not expecting.

25 Q Did you tell the clients at these

1 meetings or at that first meeting that the case had
2 been lost in America?

3 A Way prior to that.

4 Q What did you tell them about losing
5 the case in America?

6 A We never said that we lost the case
7 in America.

8 Q You said way prior, what did you mean
9 by that?

10 A The correspondence speaks for itself
11 as to the extent that we put them on notice in
12 writing about the specific status of the California,
13 New York action.

14 Q I'm not talking about that.

15 In the settlement meetings
16 themselves, what did you tell the clients about the
17 status of the litigation in the United States?

18 A We went through specifically where
19 the case is standing, California and in New York, to
20 the extent of the court's unwillingness to retain
21 jurisdiction for the Brazilian families absent
22 something happening in Brazil to cause the court to
23 revisit that issue, and that matters were not
24 proceeding well in New York.

25 Q Why? What was happening in New York?

1 A I believe at the time that the
2 settlements occurred the New York court, we felt, was
3 either leaning towards FNC dismissal or had actually
4 entered an order. I don't recall.

5 Q Did you, at any time during these
6 meetings, tell the clients that the cases in the
7 United States had been lost and that if they didn't
8 take the settlements that were on the table they
9 would not get any money?

10 A No.

11 Q What precisely did you tell them in
12 that regard, if anything?

13 A As I said before, the status of the
14 cases in California and New York, and that due to the
15 status of the cases in those places, that the
16 settlements, by enlarge, we thought were favorable in
17 light of the remaining venues which, in Brazil, is a
18 never-ending litigation process.

19 Q So, you told them that the
20 proceedings in Brazil could go on for maybe many,
21 many years?

22 A Usually local counsel -- we would ask
23 them if there was local counsel in the room. We
24 would ask them their own opinion on that issue. But,
25 after a while, it became quite clear that the

1 expectation that the families had, either from local
2 counsel or from their own experiences in life, in
3 other litigation and other matters in Brazilian cases
4 in Brazil, would go on for a long time.

5 Q Did you recommend all of these
6 settlements?

7 A I believe we did.

8 Q You hesitated. Are there some that
9 you may not have recommended?

10 A There were cases where the families
11 had signed releases in Brazil and we felt that the
12 money we obtained on top of that, without hesitation,
13 we could recommend.

14 Other families we gave
15 qualifications. Some families had huge wage earners
16 with very young children. And with regret or
17 sadness, we had to recommend in light of what we felt
18 were their prospects overall. In some, I believe, we
19 recommended all settlements.

20 Q In how many of these settlement
21 meetings did Mr. Guimaraes sit in on?

22 A 10 or 15, at least.

23 Q Maybe more?

24 A Maybe more, yeah.

25 Q Over how many days did these

1 you were recommending?

2 A That the cases should continue on.

3 Q Did he tell you that he thought that
4 the settlements were insufficient and that more money
5 should be obtained?

6 A He may have written that, yes.

7 Q Did you tell the clients that in
8 order to complete the settlements they had to fire
9 Mr. Guimaraes?

10 A We told them that our understanding
11 was that if their counsel won't sign the dismissal,
12 they won't be able to get the funds and they need to
13 be represented by counsel who will respect their
14 wishes.

15 Q Did you tell them that they had to
16 terminate the services of Mr. Guimaraes in order to
17 collect the settlement funds that you recommended?

18 A I don't believe we told them to do
19 so. I believe we told them what they would need to
20 do in order to dismiss a case of this type and to
21 accept a settlement and agreed to have counsel
22 stipulate to the dismissal.

23 Q And that would necessitate the
24 removal of Mr. Guimaraes as counsel; is that correct?

25 A My understanding of Brazilian law is

1 exactly.

2 Q And that's what you told the clients?

3 A That they would need counsel that
4 would represent them and agree to sign the dismissal.

5 Q Do you have any reason to believe
6 that Mr. Guimaraes opposed the settlement, on any
7 basis, other than what he wrote to you which is he
8 thought that you should get more?

9 A Yes.

10 Q What reason is that?

11 A General continuation of litigation,
12 generally.

13 Q For which he was not going to get
14 paid unless the litigation was over? I don't
15 understand. Could you please explain?

16 A Well, that's it. That's it. That --
17 the glory of being an aviation attorney on an ongoing
18 basis, as we were told he had done in other cases.

19 Q So, you believe that Mr. Guimaraes
20 valued the glory of continuing the litigation over
21 the benefit to the widows and orphans?

22 A Wholeheartedly.

23 Q That's your belief?

24 A Generally, although I don't believe
25 he intends to harm anyone. I believe that he felt

EXHIBIT "A.7"

1 Arthur Ballen

2 lawyer in reference to getting their money. I do
3 not know what forms or other lawyers' advice or
4 actions would be other than help them get their
5 money.

6 Q. Who other than Sampaio did the former
7 clients of Mr. Guimaraes hire?

8 MR. APUZZO: Objection.

9 A. I don't know. I don't know who -- I
10 don't know.

11 Q. Was there anyone other than Sampaio
12 hired?

13 A. Yes.

14 Q. Who?

15 A. I don't know but I've seen them, many
16 many attorneys came in.

17 Q. Well, the time frame I'm talking
18 about is after you had your settlement meetings
19 with the Brazilian clients and Mr. Guimaraes was
20 not happy with the amount of the settlement, how
21 many lawyers other than Mr. Sampaio were hired to
22 replace Mr. Guimaraes?

23 A. It has not been established that Mr.
24 Guimaraes was unhappy with the amount of the
25 settlements. He expressed to me a different reason

1 Arthur Ballen

2 why he did not want the settlements to go through.

3 Q. What did he tell you?

4 A. He told me if the settlements went
5 through, he would lose his opportunity to be the
6 most prominent aviation attorney in the country, he
7 wanted the case to continue.

8 Q. Forever?

9 A. I don't know how long in his mind he
10 wanted it to go, but he wanted the case to
11 continue.

12 Q. How much did the Jabaquara judgement
13 award to each of the plaintiffs?

14 A. Two million reais which, at that
15 time, was \$1,111,000.

16 Q. Anything else?

17 A. Yes, there was some provision for
18 future lost earnings, but I don't know what
19 amount. There was also attorney fees of, best
20 guess, eight, nine million dollars.

21 Q. Was the additional sum two thirds of
22 their net earnings up to age 65?

23 A. I read the opinion, I wasn't sure
24 which it was for, one year or to the age 65, but
25 there was a statement in the opinion was two thirds

EXHIBIT “A.8”

1 Guimaraes

2 Q. Exhibit RG 00182 through 184 and it's
3 Renato Guimaraes' Junior letter head dated
4 February 9, 2002 Speiser, Krause. Exhibit
5 number 37 is identified as production RG 00185
6 and it's a letter from Renato Guimaraes to
7 Speiser, Krause dated March 1st of 2000. The
8 letter is, referenced trip about clients to New
9 York. The question I have, who were the widows
10 who accompanied president Assali to New York.

11 A. Who?

12 Q. Who were the widows that you referred
13 to here? You say President Sandra Assali and
14 two other widows decided to go to New York.

15 Who were the other two widows?

16 A. I never heard it. I was sure Duda
17 was because Duda work as a translator because I
18 haven't heard of two other widows, not from my
19 26 families, so to speak, and that was the
20 beginning of the end because it was quite
21 surprise. But you do not ask me that.

22 Q. I appreciate that.

23 Did you understand that President
24 Assali and Duda were coming to New York to
25 listen to the settlement proposals?

1 Guimaraes

2 A. I learn after that. I felt so
3 strange at that moment that she confessed, by
4 the way.

5 Q. She confessed what?

6 A. She have a dinner with the Speiser,
7 Krause in Washington D.C., gave Speiser, Krause
8 money and did not discuss the settlement which
9 was presented to Brazil one week later.

10 Q. What is your relationship with Sandra
11 Assali today?

12 A. Today, oh, I am suing her because she
13 put my reputation at risk.

14 Q. Now I understood from your testimony
15 that there was the first widow's group with
16 Sandra Assali that's Abrapava?

17 A. She was the president of the
18 Abrapava, yes.

19 Q. And then there came a time when there
20 was a second widow's group; is that correct?

21 A. No, she still is the president of
22 this --

23 Q. No.

24 Wasn't there another group formed
25 besides for Abrapava?

EXHIBIT “B”

AFFIDAVIT

Dr. Renato Guimarães Jr., being duly sworn, according to Brazilian law upon his oath, deposes and writes:

1. I am the only Brazilian attorney for the 64 families along, together with *Speiser Krause*.

2. Many or even most of these 64 families are very much against the last professional behaviors of *Speiser Krause* but nevertheless they authorized in April *Speiser Krause* merely deal with proposals for an eventual agreement that never, as far as I know, was celebrated.

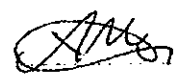
3 - Several of these 64 families already terminated with *Speiser Krause* as their attorneys, effective in these last three weeks, and many of them shall fire *Speiser Krause* in near future. As a condition for the proposals be accepted, *Speiser Krause* asked the families to fire me, but only 11 did, and several of them already have return to me under the Brazilian Bar and Judges' overview.

4 - The Brazilian Bar already took proper steps so the Federal Prosecutor can formally charge *Speiser Krause* in Federal Court with federal felony of illegal exercise of the legal professional in Brazil, according to the Brazilian Penal Code.

5 - The Brazilian Bar also took measures so that the Brazilian State Department officially communicate the US State Department to take appropriate actions in view of the criminal activities committed by *Speiser Krause* in Brazil and against the legitimate interests of the families of TAM tragedy.

6 - The Attorney-General of the State of São Paulo, the Public Prosecutors and Judges in those Courts in which I act in these lawsuits also are fully aware of these illegal activities practiced by *Speiser Krause* in Brazil.

7 - IT IS NOT TRUE, AS FAR AS I KNOW, THAT THE FAMILIES HAD SETTLED WITH NORTHROP GRUMMAN. MANY OF THEM ONLY AUTHORIZED SPEISER KRAUSE TO DEAL WITH THE APRIL PROPOSAL WHICH NEVER MATERIALIZED. THE TWO VERSIONS OF THE PROPOSAL THAT I EXAMINED WERE DRAFTED IN CONFLICT WITH THE



RG-00386

LAWS IN BRAZIL, ACCORDING TO ALL JUDGES AND CURATORS OF MINORS WHOM I HAVE CONSULTED.

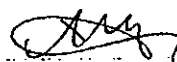
8 - I NOT ONLY DO ENDORSE the action of petitioner's in seeking monthly alimony duties owed by *Northrop Grumman*, according to the Jabaquara decision ruled in favor of the families, but indeed I STRONGLY URGE, if I may, THIS COURT TO DECIDE IN FAVOR OF THE FAMILIES because this is the only way available to the families to recover their rights, due the contempt of court grossly committed by *Northrop Grumman* in Brazil, by refusing to make any deposit of the bounds so ordered unanimously by the First Court of Appeal of Sao Paulo State, and being so punished - but in vain - by the Brazilian Judge.

9 - Item 4 of Mr. Gerard R. Lear's Affidavit is, at least to the Brazilian Ethical and Legal Standards of a Code of Responsibilities of the Attorneys, not only a plenty act of malpractice but, to be exact, an astonish case of high legal treason in Court because the nature and the scope of such a statement only could be reasonable conceived to be expected from a *Northrop* lawyer instead - and never from an attorney for the family, playing the opposite side.

10 - I have being told that it was Mr. Leigh Ballen, from *Speiser Krause*, who was in Sao Paulo, and who made arrangements to tell the families - in order to have them signing similar letters as Ms. Hoogerheide's - that the Rogatory Letter would not work out in New York because, believe or not, I had "stolen" it from the Court and had taken it to New York, thus without the authorization of the Brazilian Judge.

11 - At the time, I was in Miami, FL, working for two and half weeks with Mr. Jeffrey M. Herman, Esq., from *Herman & Mermelstein*, the law firm that is replacing *Speiser Krause* as attorneys for the families, and most of the families could not reach me easily. According to the Brazilian Law, foreigner attorneys can not talk with a common client without the presence of his or her Brazilian attorney when such attorneys have conflicting opinions. Yesterday, Mr. Lear called Mr. Herman for the first time and did admit that, since April, *Speiser Krause* did almost nothing to the families in the California Court.

12 - In Miami, FL, several prestigious law firms - after seeing some 120 pages of documents, including the manufacture of documentation falsehood - told me, in separate meetings, that *Speiser Krause* did make many things "very, very wrong in Brazil". These firms, among others, are McDonald &



RG-00387

McDonald; Goldberg & Associates, P.A., Colson Hicks Edison, P.A., and Podhurst Orseck Josefsberg Eaton Meadow Olin & Persin, P.A., and, by telephone, Omrani & Taub, P.C., from New York.

13 -- One of them even told me that I should give those documents to New York Bar so that those attorneys from Speiser Krause should be disbarred.

14 -- In fact, I am prepare to go to the Brazilian Court against Northrop and TAM again, this time to seek a judicial preventive declaration that can say - due the lies of Speiser Krause to the families and Mr. Lear's item 4 of his Affidavit to this Court -- that no proposal of agreement shall be approved by the Curator of Minors and by the Courts and, if it is somehow approved, then it shall be declared null because of its vicious fabrication of real will of the families.

15 -- In the *Aviation Law/Insurance Symposium*, held in Daytona Beach, FL, last January, 15-16, Mr. Steven Marks, Esq., from Podhurst Orseck Josefsberg Eaton Meadow Olin & Persin, P.A., in his speech on *Filing Foreign Aviation Claims in the U.S.*, give the Jabaquara decision as an example to alert those corporations that are always anxious to send a lawsuits presented in US Courts (*forum non convenies*) to a foreign country, without the due care on the real, updated legal situation of that particular country, due the globalization of the legal information in these days. An active participant of the *Symposium*, Mr. Russel Mirabile, Esq., V.P. & Director of Claims, USAIG, NY, NY, made a brief remark to me about Mr. Marks' statement.

I declare under penalty of perjury under the laws of Brazil that the foregoing is true and correct.

Executed this 6th day of February, 2001, at Campinas, SP, Brazil.



Renato Guimarães Jr.

Brazilian Bar, 80.113-SP

RG-00388

EXHIBIT "C"

RENATO GUIMARÃES JR.

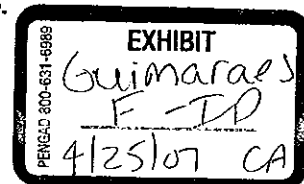
Doutor pela USP, Professor da UNICAMP

Master of Comparative Law, CIJVL, IASP

Fone (019) 3284-9102, 3284-4200, 3284-4115, 3284-3211, Rua Francisco de Toledo, 511
Cidade Universitária - DUMC-Lato, Campinas-SP, Brazil

October 13, 2000.

The Honorable Judge Jane S. Solomon,
Supreme Court of the State of New York, County of New York,
United States of America



Index No. 120256/1997, Celia Berliner et al, v. Northrop Grumman Corporation, TAM et al

As a Brazilian attorney retained by the 65 families of the victims of the crash, I would like to respectfully present to this Court the official translation into English of the decision of the Honorable Judge Rômulo Russo Jr., of São Paulo, Jabaquara Region, Brazil, in which Northrop Grumman was found responsible and thus should pay US\$ 1,111,111,11 for non-economical losses, plus 66,66% of the earnings of the respective victim to each family until when she or he would reach the age of 65. Teleflex was found not guilty. This decision is under appeals from both Northrop and the families. Northrop was also punished with the maximum fine of 20% for contempt of court (*improbus litigator, dolus malus*) because, well before the decision, Northrop refused to obey both the Judge and the Court of Appeals' orders to deposit US\$ 140,000.00 for each family as a guaranty for the then future execution in Brazil, where it has no assets. The Brazilian Superior Court of Justice, at the request of the families, already ordered a fast track for the last appeal of the families to rise the amount of the deposit, but, because, as said, Northrop has no assets here and because of its continuing contempt of court, the case in Brazil shall be fruitless.

Many families and Brazilian attorneys do not understand why this decision was not yet - as far as we know - presented to this Court, more than three months and one week after it was handed down, since Northrop and Teleflex should also be sued in Brazil by imposition of the Honorable Judge William McDonald, Superior Court of the State of California, County of Orange, on the families and on both parties, as a condition in the forum non conveniens issue, still pending, again, as far as we have been poorly informed. We have been told that the trial there is scheduled in the California Court to next April.

The anguish of the families is also growing because since last April Speiser Krause had come to Brazil several times only to press them to accept the enclosed offers made by TAM, Northrop, Teleflex, Fokker and others to settle all cases. This pressure even included Speiser Krause's arrangements

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to provide free Brazilian attorney to replace me as the local attorney for the single reason that my recommendation is against the deals, not only for its poor amount but also because of its illegality according to the Brazilian law. For this reason I have been substituted by five widows who desperately need money for the orphans. This behavior breaks our Code of Ethics and the law.

Also, Mr. Thomas Frizzell, Esq., a lawyer for Speiser Krause told me and my son last June in New York, that he did discovered evidences on Northrop's fault: Northrop had sent a new model of the thrust reverse to ~~Falkner~~ before the proper, more advanced type of aircraft had been in production. "That accident was bound to happen, Renato, and your people were the unfortunate one", Mr. Frizzell explained to us in details.

But, because we were never told about Mr. Frizzell's evidences, and because Mr. Frank Granito, III, another attorney from Speiser Krause, tried to put down Mr. Frizzell to, saying that "he is pretty junior", I even had to ask the Honorable FBI Deputy Director, Thomas J. Pickard, to help us by sending to the Jabaquara Judge, in Brazil, a copy of this crucial evidence.

Several families and their lawyers, included myself, no longer trust Arthur Baller, Leigh Ballen, Gerard Lear and Frank Granito, III, from the Speiser Krause law firm, but we do respect Thomas Frizzell. Maybe, Your Honor, there is some type of judicial safe-guarder to look over the aforementioned lawyers shoulder to verify what is really going on regarding the protection of families' rights in Court.

If it could be necessary to the Court, some families and I would be more than happy to provide full details on this utmost awkward situation.

May I say, Your Honor, that throughout my life, as a Professor of Law and as a Public Prosecutor, now retired, for the State of Sao Paulo, I, like millions in this country, look to the legal system of America as a great inspiration for the fight, in court, of the little ones against the giants. For this very reason, Your Honor, I write to you on behalf of the 65 families.

Accept, Your Honor, our most deep feelings of due respect.

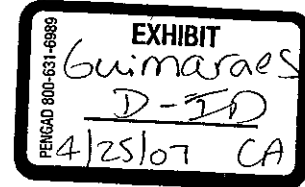
Renato Lima Jr.

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EXHIBIT "D"



To: Commander Rolim Amaro, President of TAM
 C/O: Attorney Luiz Eduardo Arena Alvarez
 Rua Oscar Freire, 379, 18° Andar, CEP 01426-001
 Phone: 282-8400; and

To: Northrop Grumman Corporation
 C/O: Pinheiro Neto Advogados
 Mr. Celso Cinra Mori
 Rua Boa Vista, 254, 9° Andar - CEP - 01014-907
 Phone: 237-8400

All the above addresses are in São Paulo, SP - Brazil

Dear Sirs.

Mr. Wanderley Minitti, from the Law Office of Richard S. Peskin, who represents me in the USA, delivered the attached copy to Speiser Krause on Friday, 10/6/00. He was not dignified with a reply from SK.

In order to prevent liability, preserve and protect my rights, and to formally manifest my intentions, you are hereby advised that, according to the powers of attorney titled Retainer Agreement, TAM Brazilian Fokker 100, October 31, 1996, granted by the 65 (sixty-five) families suing TAM and Northrop through the United States Justice System, I am entitled by contract to the usual and specific share of the lawyer fees charged jointly by Speiser Krause and I to our common clients.

Based on the guarantees assured by the Statute of the Brazilian Bar Association, Act 8906/94, you are hereby advised that no payment--either ordered by court, or obtained by settlement--resulting from these indemnification lawsuits, (even when I am not the attorney representing the families in Brazil against these companies), can be legally made to the families without my simultaneously receiving the share, to which I am entitled, of the respective fees common to Speiser Krause. SK is trying, against my advice, but in the interest of TAM and Northrop (as it is legally known by all of you from the judicial litigation proceedings), to revoke these facts with malicious intent.

More than merely trying to preserve my professional fees, the present caution protects the very ethical, legal and judicial essence of all transactions, in face of the described nullification of judicial acts, among others, in my formal accusation presented to the Attorney General in order to avoid any losses to the orphans, and also in my speeches against the agreement and its means, perverted by tergiversation and coercion.

As you must be well aware, last June in the United States copies of the same letter were sent to Peskin and to these other companies.

In order to reach a viable and lawful agreement, I suggest a conciliatory meeting, without hidden agendas, with the participation of all involved and the help of an impartial and competent mediator.

(11)

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Sincerely,

Crimes of Coercion during the course of the legal action committed by Arthur and Leigh Ballen:

Brazilian Penal Code, article 344:

"To use violence or severe threat (already consummated with the dismissal by the clients), with the intent of favoring one's own interest or the interest of a third party, against...any other person who serves...in a judicial action...

Punishment - one to four years of incarceration, fine in the amount of two to ten thousand Cruzeiros, in addition to the punishment correspondent to the violence committed."

Concealment of evidence:

Thomas Frizzel - evidence of Northrop's fault to be presented to the jury in California in April, - request of help from the FBI - the evidence in question was needed for the case trials in Brazil.

EXHIBIT "E"

RENATO GUIMARÃES JR.

Doutor pela USP, Professor da UNICAMP
Master of Comparative Law, GWU, IASP
Fone (019) 3289-8989, 3289-8990-fax-3289-4315, 3289-2921, rua Francisco de Toledo, 511
Cidade Universitária - 13.083-470, Campinas, São Paulo - Brasil

Em 20, setembro, 2000.

Excelentíssimo Senhor
Honorable LOUIS J. FREEH
DD. Diretor do Federal Bureau of Investigation,
US. Department of Justice,
c/o Thomas J. Pickard, Esquire
Deputy Director, FBI.

Excelentíssimo Senhor Diretor:

O Juiz da 1ª Vara Criminal do Fórum Regional do Jabaquara, São Paulo, Ricardo Graccho, remeteu, dia 11 p.p., para o Excelentíssimo Senhor Procurador-Geral da Justiça de São Paulo (*Attorney General for the State of Sao Paulo*) o Inquérito Policial que investiga as causas da tragédia do avião *Fokker-100*, da *FAM*, Transportes Aéreos Regionais, há quase quatro anos, nesta Capital, com 99 mortes - sendo dois americanos (*U.S. citizens*) e 10 casas destruídas, porque "há fortes indícios de que pessoa de relevo científico tinha informações... que o reverso poderia abrir... o seu fabricante, a *Northrop Grumman Corporation*" (doc. anexo).

O Juiz da 2ª Vara Cível, do mesmo Fórum, Rômulo Russo Júnior, em junho p.p., condenou a *Northrop Grumman Corporation* a pagar US\$ 1,111,111.11, para cada uma das famílias das vítimas, só por danos morais, além de pensões de 66,66% do salário do respectivo morto, até a idade em que ele completaria 65 anos de vida. A *Northrop Grumman Corporation* também foi condenada a 20% de multa por litigância de má-fé (*contempt of court*), por não ter obedecido à decisão do Egrégio Primeiro Tribunal de Alçada Civil do Estado de São Paulo (*Court of Appeals*) de depositar uma caução no Brasil para garantir a execução da condenação.

Há 65 famílias no processo, mas uma Ação Civil Pública (*class action*), movida pela Associação de Amparo às Famílias Castigadas por Acidentes Aéreos e Tragédias Antigas e Modernas, tenta a mesma indenização para todas as 109 famílias vítimas.

A presença da *Northrop Grumman Corporation*, no Brasil - onde ela nada tem - para responder à ação, só foi possível graças à imposição do Juiz William McDonald, da Suprema Corte do Estado da Califórnia, *County*

of Orange, case 783990, consolidated with various cases, Linda Andrews, individually and as Representative of the Estate of David Andrews, deceased, et al, v. Northrop Grumman Corporation, Teleflex Control System, Incorporated. 326

A Northrop Grumman Corporation também está sendo processada, com outras rés, na Supreme Court of the State of New York, Index nº 120256/1997, Celia Berliner, as administratrix of the Goods, Chattels and Credits which were of David Tobolla, deceased et al, v. Northrop Grumman Corporation, Fokker, TAM, et al.

Ambos os processos, na Califórnia e em Nova York, encontram-se suspensos - aguardando as decisões no Brasil, a condição imposta na preliminar do *forum non conveniens* - para eventualmente ser concedida a jurisdição dos Estados Unidos, como garantia de devido processo de direito (*due process of law*) às 65 famílias.

A defesa das 65 famílias, nos Estados Unidos, está a cargo do Escritório de Advocacia Speiser Krause, com quem o signatário trabalha nesses processos. Em junho último, no Escritório da Speiser Krause, em Nova York, Thomas A. Frizzell, Jr., Esquire, o advogado que produziu a prova judicial da culpa da Northrop Grumman Corporation, confirmou-me, e a meu filho, longa e minuciosamente, como ele conseguira provar que a Northrop Grumman Corporation acabara enviando para a Fokker - por erro gravíssimo, - um novo tipo de reverso, especial para um modelo mais avançado do Fokker-100, mas então ainda não em produção: "essa tragédia já era para ter ocorrido antes", concluiu. Foram também produzidos, conforme informação do Escritório da Speiser Krause, na Califórnia, "boxes and boxes" de evidências e depoimentos, no mesmo sentido, para desenvolver os processos relativos às duas famílias dos US citizens.

Assim, Senhor Diretor, em nome das 65 famílias que represento, junto com os colegas dos Estados Unidos, e de todas as demais famílias difusas que, como advogado da Associação de Amparo às Famílias Castigadas por Acidentes Aéreos e Tragédias Antigas e Modernas, tentamos proteger, peço, e peço sempre com o maior respeito, se digne Vossa Excelência tomar as devidas providências no sentido de obter, das fontes citadas, ou da Speiser Krause, ou das Cortes da Califórnia e de Nova York, como apropriado for, cópias de todas as provas e documentos, assim produzidos a respeito das causas da tragédia oriundas do reverso fabricado pela Northrop Grumman Corporation, para serem, então, entregues, diretamente pelo Federal Bureau of Investigation ao Attorney General for the State of Sao Paulo, a fim de que o Inquérito Policial possa ser concluído como exigido pela respeitável decisão do MM. Juiz Ricardo Graccho.

A inestimável cooperação do Federal Bureau of Investigation com o Poder Judiciário do Brasil apenas confirma a crescente resposta dos dois e demais países à necessidade de mútua colaboração, entre as autoridades

responsáveis pelo cumprimento da lei, contra todas as formas de "contemporary criminality", tema do presente *First World Congress of Public Prosecutors* em São Paulo, que tem a feliz participação do portador deste pedido, o *Deputy Director* Thomas J. Pickard, exatamente sobre a recíproca ajuda "between criminal investigators and Prosecutors".

Gostaria de reconhecer, mais uma vez, que o *Federal Bureau of Investigation*, assim como o *Department of Justice* e algumas *States Attorneys General Offices*, sempre atenderam meus pedidos para cooperação, então como Promotor de Justiça do Estado de São Paulo, em vários casos importantes - especialmente quando tive a honra de presidir a *World Prosecutors Section* da *World Peace Through Law Center*, baseada em *Washington, D.C.* - mas, de longe, nenhum deles tão essencial como esta catástrofe, a maior da História de São Paulo.

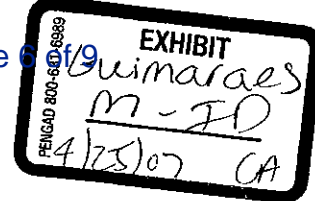
Enquanto apresento a Vossa Excelência meus sentimentos da mais alta estima e profunda consideração, confirmo que, de acordo com a lei do Brasil, estou juntando aos autos dos processos, cópia deste pedido a Vossa Excelência.

Atenciosamente,

EXHIBIT “F”

KENATO GUIMARAES JR.**Doutor pela USP, Professor da UNICAMP****Master of Comparative Law, GWU, IASP**

Fone: (019) 234-1214, 239-2921, fax 239-4315

Rua Ferreira Pentecado, 709/83, 13.010-041, Campinas, SP

Ear Mr. Einhorn,

We have great news from Brazil !

The Attorney General Office shall direct, sometime during this February, a police investigation against Arthur and his son Leigh Ballen -- lawyers with Speiser Krause (SK) -- for having charged and unilaterally collected, or are still charging and unilaterally collecting, or are trying to charge and to collect, as if they were their attorneys rights, US\$ 982,686.81 as legal fee due to SK by 26 families when, in fact, the families already had paid, years before, the very same fee to the only legitimate creditors: their Brazilian attorneys, the only ones who had worked to obtain to the families these so called anticipatory, partial awards from several TAM lawsuits originate solely in Brazil, and not from that only one Northrop lawsuit, originate first in US, and that correspondent amount had been deposited already, years before, in the banking accounts of the families.

Moreover, the correct value due by the 26 families was only US\$ 363.958,08, or 10%, the contingency fee contracted by the Brazilian attorneys and the families, including the expenses - and nor that amount of US\$ 982,686.81, almost three times more, 25% for the fees plus 2% - thus 27% - for the expenses never proven to the families.

I do not know in American law, but this civil theft of theft or larceny in Brazil is a very serious crime.

These continuing felonies are called by the Brazilian Penal Code as "*apropriação indébita continuada*" (continuing undue appropriation or undue possession). It is so feasible because the families had or have to sign the settlement first and, only 20 days after the approval of the settlement by the Brazilian Judges and by the California Judge, then the money is deposited in a banking account in Santo Antonio, Texas, in the name of Speiser Krause and then it is sent - *less these crime or civil theft* - to the families banking account down in Brazil.

Well, since Dra. Luciana is doing a research on malpractice here in US I wondered whether it would not hurt if I could also venture myself in the same challenge, as I am waiting for your consideration on my three cases.

In the old day of my LLM in the earlier seventies at The George Washington University, I did not take any course in the subject, if it already existed at all that time as an independent discipline. Thus I only could remember of something on this subject within the broad area (curse) of Contract.

So after a few updating readings I came to conclusion, if I may, that, no matter in which jurisdiction my case be presented, it should be grounded, at least from a Civil Law country observer's feelings, upon at least two theories: malpractices and for the breach of the fiduciary duty and - let me say, well beyond these rather limited negligent and ethical approaches -- also on the very ground of all the way into the very gross criminal conduct at large of a, say, pure conspiracy, where only the ancient Roman *malus dollus* governs the extreme social behavior at its worst

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Dr. Renato Guimarães Jr.

Página: 2

Speiser Krause (SK) long, consistent and sophisticate maneuvers - be indeed recovered.

Consider for instance - in another words - the fees (25%) plus expenses (2%) SK took (thus 27%) for itself upon the considerable values that I had already recovered through my 26 lawsuit against co-defender TAM in Brazil, nothing to say about the other families, out of 65, with fellow Brazilian attorneys, beside me, all and every of them for the 39 TAM cases without any connection at all with the Northrop case in California with its *forum non*, stay and so for.

Well, all 26 families already had paid (10%) for mine and several other attorneys' fees over the amounts each of families had received one, two and more years earlier. Even today, almost five years later, the families must accept that a substantial part of their money be so retained and stolen - without any legal reason at all - at the SK banking account in Santo Antonio, Texas, where Northrop, TAM (Lloyd's, of London) and other defenders deposit the money due to the families down in Brazil.

In another words, SK charges and collects as it was SK own fee (25%) plus as it's own expenses (2%) when, in fact, the due amount already years earlier had being received (but only as 10%, including expenses) by the Brazilian attorneys for their work and expenses in Brazil, without any cooperation at all from SK - nobody at SK even speaks one single word in Portuguese, except "money".

Therefore, the families "paid" twice (indeed "paid" once and was "stolen" latter) the same fee - and more (17% = 27% less 10%) for SK - for just one work already done.

Kindly look at the column "amounts" at left of the map of the 65 families' settlement numbers. On the top you can read "26" and, in the button, the sum of "US\$ 3.639.580,81", or "22,78%" of the total of the settlement for the 26 families.

Imagine the amount for the other 39 families. And then add to the all 65 families.

Now, just look how much this "undue appropriation", as the Penal Codes call this crime in Civil Law Countries, represent to some family.

Take a look at the two orphans Fischer (son and daughter of Roberto Fischer, victim under the number 47 at the first, small column at the left of the same page of the settlement which SK arbitrary divided among the 26 families without ever showing how SK divided the US\$ 40 million among them, which methodology and criteria were used, if any, and so for.

You will see that the "undue appropriation" by SK against the Fischer kids reached up to 27% (retained by SK in Texas) out the "74,96%", or "US\$ 239.533,95" the kids had already received years ago, thanks to Renato's and other Brazilian attorneys' (already paid but, again, as much as only 10%) by the kids at that time) legal work.

Thus, as you see, out of the US\$ 319.533,95 (at the column "total", at the right of the same page) that the kids received, only 25%, or US\$ 80,000.00, upon which amount it should be deducted by 27% for SK, assuming that SK had indeed

Dr. Renato Guimarães Jr.

Página: 3

battle in an American Court when, in fact, it was no more than another "bullshit", as Arthur Ballen put it latter on ("but they like it"), for the sole SK's goal of a kind of utmost, ultimate ambulance chasing to seduce, to convince potential, many miserable clients under a monster fraud, to become SK clients.

And how about the "utmost good faith, honesty, integrity, fairness and fidelity" sustained by SK during all these years, up to this very time, February 2004, once its lawyers never told, as they must, to the California Judge that Northrop Grumman had committed "contempt of court" in Brazil.

Yes, Northrop had breached its commitment to the own American Court that they would obey - *as a condition under the forum non defense, under stay up today* - all the Brazilian Courts decisions (and that one on the bound was unanimous and by the Judges at the very Sao Paulo Supreme Court of Appeal for this cause.

But the order to deposit a bound in Brazil also never was obeyed, for which very illegal defiance Northrop Grumman was fined and, again, it never paid the fine at all.

And SK did not tell this to the California Judge.

Once more, SK made an enormous, unique Mockery Justice at the cost of the future of the families !

By its criminal omission - "failure to disclose a material fact" - of simply tell this true of this contempt of court by Northrop Grumman against the Brazilian Judiciary to the California Judge, Speiser Krause made a "miscarriage of Justice" not only at the Sao Paulo Court, but also in the California Court.

The same vicious of SK is presented in the "secret" private deposition and the handout of "relevant documents" in Brazil, under a hidden agreement among Northrop, TAM and others, but for only one single case, the one for only a particular window and her two orphans, Linda Andrews, of California - without any knowledge of any of the all 65 Brazilian families with some 100 orphans in desperate need for evidence. Ms. Linda settled for some US\$ 6,700,000.00. Compare with the US\$ 80,000.00, less 27% for SK fee (partially paid twice) and expenses for the Fischer orphans.

Gerard Lear, the managing partner of SK, signed and gave an affidavit to Northrop Grumman that introduced it before the New York Judge as its own defense against the Rogatory Letter issued by the Jabaquara Judge - the one who granted the US\$ 1,111,111,11 and so forth awards to the families - that reads as follow:

"...Considerable time and expense has been spent in drafting the settlement releases and other necessary documents in both English and Portuguese.

"We in no way endorse the action of petitioner's attorney in seeking partial enforcement against Northrop Grumman of the judgment of the Brazilian court at Jabaquara. That judgment came months after

Dr. Renato Guimarães Jr.

Página: 4

But, the American Law:

"precludes the attorney from having any personal interests antagonistic without the knowledge or consent of the client... adverse interest may be liable... for fraud, actual or constructive... liable for any loss sustained... paragraphs 237, 7... and 251, 7a."

And moreover:

"Practically any breach of violation... constitutes constructive fraud and is sufficient for this purpose. Non disclosure of an adverse interest fully inform or advise (makes the attorney) responsible as for fraud although without positive misrepresentation of intention to defraud."

Clearly, we are here well beyond the limits of the "reasonableness of the settlement", as Prof. Richard A. Posner put it, *An Economic analysis of Law* 570 (4th ed. 1992), nothing to say of "infliction of emotional distress".

Thus, cases in America, since a US Supreme Court landmark decision back in 1850, as I read, over and over require from attorneys "honorably and faith fully discharged" duties under the "sterner principles of morality and justice". Anything less than that would be viewed as a "detriment of the rights of the party".

Again, these are only guesses from a Civil Law attorney. Of course you have incomparable, complete domain over the matter and certainly you are feeling how deep the SK's treason against the families in Brazil was and is.

They all thrust you will redeem them.

Thanks for your patience.

Miami, Super Ball Day, 2004.

(a) Renato Guimaraes Jr. (305) 534-8289
or Dra. Luciana (305) 416-0419 or (917) 4350-3299

EXHIBIT “G”

COPY

RECEIVED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER SEP 08 2006 ALAN SLATER, Clerk of the Court		MC-050 FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER SEP 08 2006 ALAN SLATER, Clerk of the Court J. Haines BY J. HAINES
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Steven C. Shuman, Esq. - SBN 82828 Engstrom, Lipscomb & Lack 10100 Santa Monica Boulevard, 16th Floor Los Angeles, CA 90067 TELEPHONE NO.: (310) 552-3800 FAX NO. (Optional): (310) 552-9434 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiffs		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: Santa Ana, CA 92701 CITY AND ZIP CODE: Central Justice Center BRANCH NAME:		
CASE NAME: Andrews, et al. v. Northrop Grumman, et al.		
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)		CASE NUMBER: Dept. CX104 786149 C/W 783990 - LEAD

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): Silvana Arjona Ferraz makes the following substitution:

1. Former legal representative ☐ Party represented self ☒ Attorney (name): LIO SPEISER KRAUSE
 2. New legal representative ☐ Party is representing self ☒ Attorney
 a. Name: Steven C. Shuman, Esq. b. State Bar No. (if applicable): 82828
 c. Address (number, street, city, ZIP, and law firm name, if applicable):
Engstrom, Lipscomb & Lack, 10100 Santa Monica Boulevard, 16th Floor, Los Angeles, CA 90067
Telephone: (310) 552-3800; Facsimile: (310) 552-9434
 d. Telephone No. (include area code):
 3. The party making this substitution is a ☒ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other (specify):
 Case No.: 786149

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Personal Representative
- Guardian ad litem
- Conservator
- Probate fiduciary
- Unincorporated association
- Trustee
- Corporation

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution. 786149
 Date: 12 July 2006
Silvana Arjona Ferraz Nogueira
 (TYPE OR PRINT NAME)

Silvana P. Arjona
 (SIGNATURE OF PARTY)

5. ☒ I consent to this substitution.
 Date: 8.9 2006
John J. Veih, Esq. of Speiser Krause
 (TYPE OR PRINT NAME)

John J. Veih
 (SIGNATURE OF FORMER ATTORNEY)

6. ☒ I consent to this substitution.
 Date: 8/1/06
Steven C. Shuman, Esq.
 (TYPE OR PRINT NAME)

Steven C. Shuman
 (SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10100 Santa Monica Boulevard, 16th floor, Los Angeles, CA 90067.

On September 6, 2006, I served the foregoing document described as **SUBSTITUTION OF ATTORNEY** on the interested party(ies) in this action by placing a true copy thereof enclosed in the sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☒ BY MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

☐ BY PERSONAL DELIVERY: I caused such envelope to be delivered by hand to the offices of the addressee.

☐ VIA FACSIMILE: I caused all of the pages of the above entitled document to be sent to the recipients noted above via electronic transfer (FAX) at the respective facsimile number(s) indicated above. This document was transmitted by facsimile and transmission reported complete without error.

☐ BY FEDERAL EXPRESS: I served the above-entitled document(s) via overnight mail in said action by placing a true copy thereof in a sealed envelope in the designated area for Federal Express pick-up.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postal meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 8, 2006, at Los Angeles, California.



Leslie Jaramillo

LINDA ANDREWS, *et al.* v. NORTHROP GRUMMAN CORPORATION, *et al.*
Orange County Superior Court Case No. 783990
and Additional Consolidated Cases

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Attorneys for Defendant and Cross-
Complainant Teleflex Control Systems, Inc.

MC-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Steven C. Shuman, Esq. - SBN 82828 Engstrom, Lipscomb & Lack 10100 Santa Monica Boulevard, 16th Floor Los Angeles, CA 90067 TELEPHONE NO: (310) 552-3800 FAX NO. (Optional): (310) 552-9434 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Plaintiff): Plaintiffs		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER ANG62232866 ADDRESS: Clerk of the Court BY J. HAINES
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: Santa Ana, CA 92701 CITY AND ZIP CODE: Central Justice Center BRANCH NAME:		
CASE NAME: Andrews, et al. v. Northrop Grumman, et al.		
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)		CASE NUMBER: Dept. CX104 786149 C/W 783990 LEAD

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): **Silvia Lucia Peixoto Arjona** makes the following substitution:

- Former legal representative ☐ Party represented self ☒ Attorney (name): **L/O SPEISER KRAUSE**
- New legal representative ☐ Party is representing self ☒ Attorney
 - Name: **Steven C. Shuman, Esq.**
 - State Bar No. (if applicable): **82828**
 - Address (number, street, city, ZIP, and law firm name, if applicable):
Engstrom, Lipscomb & Lack, 10100 Santa Monica Boulevard, 16th Floor, Los Angeles, CA 90067
Telephone: (310) 552-3800; Facsimile: (310) 552-9434
 - Telephone No. (include area code):
- The party making this substitution is a ☒ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other (specify):
 Case No **786149**

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Personal Representative
- Guardian ad litem
- Conservator
- Probate fiduciary
- Unincorporated association
- Trustee
- Corporation

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution. **786149**

Date: **12 June 2006**

Silvia Lucia Peixoto Arjona

(TYPE OR PRINT NAME)

Silvia Lucia Peixoto Arjona
 (SIGNATURE OF PARTY)

5. ☒ I consent to this substitution.

Date: **8/8**, 2006

John J. Voth, Esq., of Speiser Krause

(TYPE OR PRINT NAME)

John J. Voth
 (SIGNATURE OF FORMER ATTORNEY)

6. ☒ I consent to this substitution.

Date: **8/1/06**

Steven C. Shuman, Esq.

(TYPE OR PRINT NAME)

Steven C. Shuman
 (SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

Page 1 of 2

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10100 Santa Monica Boulevard, 16th floor, Los Angeles, CA 90067.

On August 22, 2006, I served the foregoing document described as **SUBSTITUTION OF ATTORNEY** on the interested party(ies) in this action by placing a true copy thereof enclosed in the sealed envelopes addressed as follows:

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☒ BY MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

☐ BY PERSONAL DELIVERY: I caused such envelope to be delivered by hand to the offices of the addressee.

☐ VIA FACSIMILE: I caused all of the pages of the above entitled document to be sent to the recipients noted above via electronic transfer (FAX) at the respective facsimile number(s) indicated above. This document was transmitted by facsimile and transmission reported complete without error.

☐ BY FEDERAL EXPRESS: I served the above-entitled document(s) via overnight mail in said action by placing a true copy thereof in a sealed envelope in the designated area for Federal Express pick-up.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postal meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 22, 2006, at Los Angeles, California.


Leslie Jaramillo

LINDA ANDREWS, *et al.* v. NORTHROP GRUMMAN CORPORATION, *et al.*
Orange County Superior Court Case No. 783990
and Additional Consolidated Cases

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Julie W. Russ, Esq.
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Attorneys for Defendant & Cross-
Complainant Northrop Grumman Corp.

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Attorneys for Defendant and Cross-
Complainant Teleflex Control Systems, Inc.

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MC-050

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
SEP 08 2006
ALAN SLATER, Clerk of the Court

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and address):
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Engstrom, Lipscomb & Lack
10100 Santa Monica Boulevard, 16th Floor
Los Angeles, CA 90067
TELEPHONE NO.: (310) 552-3800 FAX NO. (Office): (310) 552-9434
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS: Santa Ana, CA 92701
CITY AND ZIP CODE: Central Justice Center
BRANCH NAME:

CASE NAME: Andrews, et al. v. Northrop Grumman, et al.

SUBSTITUTION OF ATTORNEY—CIVIL
(Without Court Order)

FOR COURT USE ONLY
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
SEP 08 2006
ALAN SLATER, Clerk of the Court
J. Haines
BY J. HAINES

CASE NUMBER Dept. CX104
786149 C/W 783990 - LEAD

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): Silvana Arjona Ferraz Nogueira makes the following substitution:

- Former legal representative ☐ Party represented self ☒ Attorney (name): L/O SPEISER KRAUSE
- New legal representative ☐ Party is representing self ☒ Attorney
 - Name: Steven C. Shuman, Esq. b. State Bar No. (if applicable): 82828
 - Address (number, street, city, ZIP, and law firm name, if applicable):
Engstrom, Lipscomb & Lack, 10100 Santa Monica Boulevard, 16th Floor, Los Angeles, CA 90067
Telephone: (310) 552-3800; Facsimile: (310) 552-9434
 - Telephone No. (include area code):
- The party making this substitution is a ☒ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other (specify):
Case No.: 786149

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Personal Representative
- Guardian ad litem
- Conservator
- Probate fiduciary
- Unincorporated association
- Trustee
- Corporation

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution. 786149
Date: 12 June 2006
Silvana Arjona Ferraz Nogueira
(TYPE OR PRINT NAME)

Silvana P. Arjona
(SIGNATURE OF PARTY)

5. ☒ I consent to this substitution.
Date: 8.9 2006
John J. Velh, Esq., of Speiser Krause
(TYPE OR PRINT NAME)

John J. Velh
(SIGNATURE OF FORMER ATTORNEY)

6. ☒ I consent to this substitution.
Date: 8/1/06
Steven C. Shuman, Esq.
(TYPE OR PRINT NAME)

Steven C. Shuman
(SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10100 Santa Monica Boulevard, 16th floor, Los Angeles, CA 90067.

On September 6, 2006, I served the foregoing document described as **SUBSTITUTION OF ATTORNEY** on the interested party(ies) in this action by placing a true copy thereof enclosed in the sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☒ BY MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

☐ BY PERSONAL DELIVERY: I caused such envelope to be delivered by hand to the offices of the addressee.

☐ VIA FACSIMILE: I caused all of the pages of the above entitled document to be sent to the recipients noted above via electronic transfer (FAX) at the respective facsimile number(s) indicated above. This document was transmitted by facsimile and transmission reported complete without error.

☐ BY FEDERAL EXPRESS: I served the above-entitled document(s) via overnight mail in said action by placing a true copy thereof in a sealed envelope in the designated area for Federal Express pick-up.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postal meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 8, 2006, at Los Angeles, California.


Leslie Jaramillo

LINDA ANDREWS, *et al.* v. NORTHROP GRUMMAN CORPORATION, *et al.*
Orange County Superior Court Case No. 783990
and Additional Consolidated Cases

SERVICE LIST

John J. Veth, Esq.
Douglas W. Schroeder, Esq.
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949-553-1421 ph.
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Attorneys for Plaintiffs

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Kimberly A. Donlon, Esq.
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213-620-8816 fx.

Attorneys for Defendant & Cross-
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A. Kristine Floyd, Esq.
Julie W. Russ, Esq.
ALLEN MATKINS LECK GAMBLE &
MALLORY LLP
1900 Main Street, Fifth Floor
Irvine, CA 92614-7321
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Aviation B.V., et al.

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Aviation B.V., et al.

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San Francisco, CA 94109
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415-977-1111 fx.

Attorneys for Defendants TAM Transportes
Aeros Meridionias S.A.

1 James W. Hunt, Esq.
2 Suzanne McNulty, Esq.
3 MENDES & MOUNT
4 725 South Figueroa Street, 19th Floor
5 Los Angeles, CA 90017
6 213- 955-7700
7 213- 955-7725
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Attorneys for Defendant and Cross-
Complainant Teleflex Control Systems, Inc.

MC-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Steven C. Shuman, Esq. - SEN 82828 Engstrom, Lipscomb & Lack 10100 Santa Monica Boulevard, 16th Floor Los Angeles, CA 90067 TELEPHONE NO.: (310) 552-3800 FAX NO. (Optional): (310) 552-9434 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY ALAN SLATER, Clerk of the Court <i>J. Haines</i> BY J. HAINES
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: Santa Ana, CA 92701 CITY AND ZIP CODE: Central Justice Center BRANCH NAME:		
CASE NAME: Andrews, et al. v. Northrop Grumman, et al.		
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)		CASE NUMBER: Dept. CX104 786149 C/W 783990 — LEAD

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): **Daniela Peixoto Arjona** makes the following substitution:

- Former legal representative ☐ Party represented self ☒ Attorney (name): **L/O SPEISER KRAUSE**
- New legal representative ☐ Party is representing self ☒ Attorney
 - Name: **Steven C. Shuman, Esq.**
 - State Bar No. (if applicable): **82828**
 - Address (number, street, city, ZIP, and law firm name, if applicable):
Engstrom, Lipscomb & Lack, 10100 Santa Monica Boulevard, 16th Floor, Los Angeles, CA 90067
Telephone: (310) 552-3800; Facsimile: (310) 552-9434
 - Telephone No. (include area code):
- The party making this substitution is a ☒ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other (specify):

Case No.: **786149**

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Personal Representative
- Guardian ad litem
- Conservator
- Probate fiduciary
- Unincorporated association
- Trustee
- Corporation

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution. **786149**

Date: **05 June**, 2006

Daniela Peixoto Arjona

(TYPE OR PRINT NAME)

Daniela Arjona
 (SIGNATURE OF PARTY)

6. ☒ I consent to this substitution.

Date: **7-8**, 2006

John J. Veth, Esq. of Speiser Krause

(TYPE OR PRINT NAME)

John J. Veth
 (SIGNATURE OF FORMER ATTORNEY)

8. ☒ I consent to this substitution.

Date: **8/1/06**

Steven C. Shuman, Esq.

(TYPE OR PRINT NAME)

Steven C. Shuman
 (SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

Page 1 of 2

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10100 Santa Monica Boulevard, 16th floor, Los Angeles, CA 90067.

On August 22, 2006, I served the foregoing document described as **SUBSTITUTION OF ATTORNEY** on the interested party(ies) in this action by placing a true copy thereof enclosed in the sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☒ BY MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

☐ BY PERSONAL DELIVERY: I caused such envelope to be delivered by hand to the offices of the addressee.

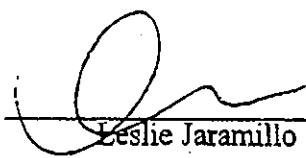
☐ VIA FACSIMILE: I caused all of the pages of the above entitled document to be sent to the recipients noted above via electronic transfer (FAX) at the respective facsimile number(s) indicated above. This document was transmitted by facsimile and transmission reported complete without error.

☐ BY FEDERAL EXPRESS: I served the above-entitled document(s) via overnight mail in said action by placing a true copy thereof in a sealed envelope in the designated area for Federal Express pick-up.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postal meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 22, 2006, at Los Angeles, California.


Leslie Jaramillo

LINDA ANDREWS, *et al.* v. NORTHROP GRUMMAN CORPORATION, *et al.*
Orange County Superior Court Case No. 783990
and Additional Consolidated Cases

SERVICE LIST

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Douglas W. Schroeder, Esq.
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949-553-1346 fx.

Attorneys for Plaintiffs

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Kimberly A. Donlon, Esq.
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MALLORY
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Complainant Northrop Grumman Corp.

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Complainant Northrop Grumman Corp.

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Attorneys for Cross Defendants Fokker
Aviation B.V., et al.

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Aviation B.V., et al.

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Attorneys for Defendant and Cross-
Complainant Teleflex Control Systems, Inc.

SPEISER KRAUSE

A PROFESSIONAL CORPORATION

NEW YORK OFFICE
140 EAST 45TH STREET, 34TH FL.
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FAX: (949) 553-1346



June 6, 2007

Steven C. Shuman
Engstrom, Lipscomb and Lack
10100 Santa Monica Blvd.
16th Floor
Los Angeles, CA 90067

Re: *Andrews v. Northrop Grumman Corporation and Consolidate Cases*
Ramos v. Northrop Grumman Corporation
Our Case No. 729.950

Dear Steve:

In response to your letter of May 23, 2007 enclosed please find the Substitution of Attorney form for Vanessa Ramos, on behalf of herself and her son, Pedro Ricardo Marciel, which I have executed.

Please contact me if anything else is needed.

Sincerely yours,

SPEISER KRAUSE

GERARD R. LEAR

GRL/kjm
Enclosure

cc: William J. Appuzo, Esq.

MC-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Steven C. Shuman, Esq. - SBN 82828 Engstrom, Lipscomb & Lack 10100 Santa Monica Boulevard, 16th Floor Los Angeles, CA 90067 TELEPHONE NO.: (310) 552-3800 FAX NO. (Optional): (310) 552-9434 E-MAIL ADDRESS (Optional): ATTORNEY FOR (name): Plaintiffs		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: Santa Ana, CA 92701 CITY AND ZIP CODE: Central Justice Center BRANCH NAME:		
CASE NAME: Andrews, et al. v. Northrop Grumman, et al.		
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)		CASE NUMBER: 786201 C/W 783990

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): Vanessa Pereira Ramos makes the following substitution:

- Former legal representative ☐ Party represented self ☒ Attorney (name): L/O SPEISER KRAUSE
- New legal representative ☐ Party is representing self ☒ Attorney:
 - Name: Steven C. Shuman, Esq.
 - State Bar No. (if applicable): 82828
 - Address (number, street, city, ZIP, and law firm name, if applicable):
 Engstrom, Lipscomb & Lack, 10100 Santa Monica Boulevard, 16th Floor, Los Angeles, CA 90067
 Telephone: (310) 552-3800; Facsimile: (310) 552-9434
 - Telephone No. (includes area code):
- The party making this substitution is a ☒ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other (specify):

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Personal Representative
- Guardian ad litem
- Conservator
- Probate fiduciary
- Unincorporated association
- Trustee
- Corporation

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution.

Date: 2007

Vanessa Pereira Ramos

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY)

5. ☒ I consent to this substitution.

Date:

GERARD LEAR, M. ESQ.

(TYPE OR PRINT NAME)

(SIGNATURE OF FORMER ATTORNEY)

6. ☒ I consent to this substitution.

Date:

Steven C. Shuman, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

Page 1 of 2

Form Adopted for Mandatory Use
 Judicial Council of California
 MC-050 (Rev. January 1, 2006)

SUBSTITUTION OF ATTORNEY—CIVIL
 (Without Court Order)

Code of Civil Procedure, §§ 364(1), 265;
 Cal. Rules of Court, rule 5.76

American LegalNet, Inc.
www.USCourtsForms.com

EXHIBIT “H”

Renato Guimaraes, Jr. (Letterhead)

January 22, 2001.

FYI -attached yellow paper saying that this document is VERY IMPORTANT

Dear clients, ex-clients and colleagues:

The most important American authority on the Brazilian Justice, Mr. Keith S. Rosenn, from Miami University, who is married with a woman from Rio de Janeiro and who is author of many legal books suggested me a few law firms to replace SK. I presented our cases to these firms and to others. For approximately 3 hours I had an appointment with each firm, which are the following: McDonald & McDonuld All firms are from Miami, and through the telephone I was able to speak with Omrani & Taub, P.C., from NY, and through my attorney, Mr. Wanderley Minitti, I was able to contact Kreindler & Kreindler, also from NY. All the six consultations were enthusiastic and unanimous about the facts regarding the families.

All the firms condemned what SK was doing to the Brazilian families. None of the firms defended SK. All the firms, except one, which found our case too complex, wanted to replace SK. Two of the firms, because of their relation to SK, offered help to solve the problems of the agreements in a friendly way. Mr. Minitti has been working in New York with my attorney Richard Peskin since Christmas (mainly working on Letters Rogatory for 26 families). I chose to hire the firm Herman & Maermelstein (HM) from Miami. They will do for us what SK haven't done since April, which is basically defend the Brazilian families before the American Justice, where we were abandoned.

I only had time to consult two families and both decided to substitute SK for the HM. HM asked Judge McDonald to order Northrop to pay for the families the conviction of Jabaquara (R\$2.000.000,00) for the moral damages + 66,66% of mensal compensation of each deceased. Also, HM will help me with the Police Investigation regarding the falsification of documents of Comte. Rolim's in failing to train the pilots, as well as the negligence of Northrop's employees who sent the wrong "reverse" to Fokker. SK never demonstrated interest for these facts, which I believe, could help us.

In only a week HM figured out, in California, most of what SK has kept from us since April, basically hiding the information that our case was submitted to Federal Court because of Fokker's request, and then returned to Judge McDonald, who adjourned the jury which was first scheduled to April 16.

WHY THE JURY WAS ADJURNED?

Teleflex sued Fokker and TAM, the date of accident's 4 year anniversary, October 31, 2000. Teleflex's lawsuit was filed in Federal Court. On December 19, Fokker was able to transfer the action to Judge McDonald. This is a fight of more than hundred million dollars - only SK doesn't fight for the Brazilian Families. In a couple days, HM will demonstrate to judge McDonald what SK has denied doing since April, alleging that

16

SK 002332

Jabaquara's conviction is useless before the USA. All the 6 law firms that I consulted denied this information. We need to demonstrate the terrible behavior of Northrop in Brazil. They were convicted for their wrongful conduct and bad faith because they did not posted a bond, even though they promised judge McDonald that they would respect the Brazilian Justice. It is outrageous how our rights were abandoned and damaged because of SK omission and disinformation.

HM will ask to transfer all the 65 suits to California, even the families which never participated or the ones who gave up about the Jabaquara. Also, they will open a lawsuit for those families who never sued in the Brazilian Justice or USA Justice, as well as the families of the pilots and the houses that were destructed because of the crash. Everything that SK always rejected to do. This is the only way to revert all the damages that SK caused to all the families.

During the lectures of Aviation Law and Insurance sponsored by the University of Daytona Beach this week, many people commented about Jabaquara's conviction, which SK always attacked. In the last day of the lecture, I had an appointment with the Vice President of Northrop, Mr. Russel Mirabile, who wrote the letter that SK distributed to all families and he said that he is opened to discuss the agreement and he has affirmed that the settlement/agreement must be done according to the Brazilian Law. I told him that the new lawyers, who are replacing SK, would take care of this matter.

WHY WE SHOULD CHANGE THE AMERICAN LAWYERS?

Because it is the only way that the Brazilian families: (1) will get a proposal of settlement; (a) with no risks; (b) much higher; (c) which can be approved by the Brazilian Authorities or (2) be allowed to receive the Northrop indemnities by the USA Justice.

HOW MUCH IT WILL COST FOR THE FAMILIES TO CHANGE THE ATTORNEYS?

Nothing. To be honest, the cost will decrease from 25% (SK fees) to 24% (HS fees). And all the fees that SK has the right to receive for its services must be charged against HS, according to the USA law. They cannot charge the families for those fees. The attached documents can show you that matter as they repeat SK contracts.

It is important to notice that, for me, this replacement is not good because my portion is equal, proportionally, for both lawyers fees: for SK(25%) and for HS(24%). Do I lose 1%. No! I prefer, of course, to receive less proportionally, because what really interests me is the final amount and this amount will determine what every family will receive. Consequently, we have both the same interest because the more the families receive the better for all the lawyers.

The Delay? The April agreements/ settlements that were to be finalized within 20 days have not been executed. I can affirm that they will never succeed in the Brazilian Justice. The pressure to make better and quickly agreements can only be made by HS and not by

SK, which has been sued by OAB, MP and which states that we already lost before the American justice, another lie.

WHICH FAMILIES HAVE REPLACED SK FOR HS?

I had the chance to speak with only two families. One of the families is the family of Prof. Fernando Lobo Vaz de Mello. Mr. Fernando elaborated a document regarding the possible causes of the crash. Mr. Fernando questioned the engineers from Fokker about the falsified letters written by Mr. Rolim. Mr. Fernando's letter prompted Fokker's representatives to contact SK. Then SK asked Mr. Fernando to stop the investigations because his actions were making damages to the settlement.

The other family is Ms. Suzana Klepetar's family. She is not my client but her attorney in Brazil, Ms. Lucimar Machado, also approved the change of SK for HM.

Why did I only speak to these 2 families? Because HS needed to take urgent measures in favor of all the 65 families. Only now, and because of this letter, I am being able to inform the families about this replacement. I ask all of the families to inform the other families about this replacement and the new course of the indemnities.

Great news: in Brazil, the legal authority responsible for the orphans was favorable about our request and the Judge of the Family Court, who convicted TAM with 7 identical sentences, will probably decide on February my request for these 7 families.

In NY, the Federal Judge scheduled for February 5 at 3pm. a meeting where Northrop will pay US\$ __ (illegible) for the 26 families which I represented in the conviction of Jabaquara.

Thank you for you trust.

Renato Guimaraes Jr.

SK 002334

muito

importante

RENATO GUIMARÃES JR.

Doutor pela USP, Professor da UNICAMP

Master of Competitive Law, GWU, IASP

Fones (019) 3399-4989, 3264-8990, 3264-4713, 3264-2921. Rua Francisco de Toledo, 511
Cidade Universitária - 13.063-470, Campinas, SP

Miami, Flórida, USA, Janeiro 22, 2001.

Prezados Clientes, ex-Clientes e colegas:

A maior autoridade americana a respeito da Justiça no Brasil, o Prof. Keith S. Rosenn - da Universidade de Miami, casado com uma carioca, autor dos livros (1) *Jeito na Cultura Jurídica Brasileira, Corrupção e Reforma Política no Brasil*, etc.) e que perito sobre o Direito Brasileiro na Justiça daqui - indicou-me algumas firmas para substituir a *Speiser Krause* (SK). Apresentei nossos casos para elas e outras firmas. Durante umas tres horas me reuni, separadamente, com cada uma delas, que são as seguintes - *McDonald & McDonald*; *Goldberg & Associates, P.A.*, e *Colson Hicks Ebidson, P.A.* e *Podhurst Orseck Josephsberg Eaton Meadow Olin & Perwin, P.A.*, todos de Miami, por telefone com *Omrani & Taub, P.C.*, de Nova York e, através de meu advogado, Dr. Wanderley Minitti, com a *Kreindler & Kreindler*, também de Nova York. As seis consultas foram enfáticas e unâneas sobre os fatos com as famílias.

Todas condenaram o que a SK faz com as famílias do Brasil. Nenhuma delas defendeu a SK. Todas, menos uma, que achou nosso caso muito complicado, quiseram substituir SK. Duas delas, devido a ligações com a SK, se dispuseram a resolver essa novela dos acordos amigavelmente. Após consultar o Dr. Wanderley Minitti que, desde antes do Natal, trabalha em Nova York com meu advogado Richard S. Peskin, no cumprimento da Rogatória (vide abaixo) para as 26 famílias que representei na condenação do Jabaquara, optei por contratar a firma *Herman & Mermelstein (HM)* daqui de Miami, para fazer o que a SK não faz desde abril - defender as famílias do Brasil na Justiça dos USA, onde estávamos abandonados.

Tive tempo de consultar apenas duas famílias e ambas imediatamente substituíram a SK pela HM; que já pede para o juiz McDonald obrigar a *Northrop* pagar tudo deve a elas, pela condenação no Jabaquara - os R\$ 2.000.000,00 pelos danos morais, mais 66,66% dos rendimentos mensais da vítima respectiva até quando ela complementaria 65 anos de idade, e retroativas essas pensões a data da tragédia. A HM também irá me ajudar no Inquérito Policial, tanto na falsidade documental do Comte. Rolim sobre a dispensa do treinamento dos pilotos, como na negligência do funcionário da *Northrop* que enviou o "reverso" errado para a Fokker. A SK nunca se interessou por isso tudo - que tanto nos poderia ajudar.

Numa semana a HM descobriu, só na Califórnia, muito do que a SK nos escondeu desde abril - que nosso caso foi parar na Justiça Federal, a pedido da

SK 002335

Fokker, e voltou para o Juiz McDonald, que adiou o júri, que estava marcado para 16 de abril p.f.

Por que nosso júri foi adiado?

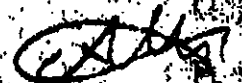
Porque a *Teleflex*, dentro de nosso processo na Califórnia, processou a Fokker, e a TAM - exatamente no dia em que a tragédia completou quatro anos, 31 de outubro de 2000 - pediu para o processo sair do Juiz McDonald e ir para a Justiça Federal. Agora, dia 19 de dezembro último, a Fokker conseguiu que o processo voltasse para o Juiz McDonald. É, pois, uma luta de dezenas, de mais de uma centena de milhões de dólares - só a SK não luta para as famílias brasileiras. Agora - neste dia - HM irá demonstrar ao Juiz McDonald, o que a SK sempre se negou a fazer desde abril - sob a alegação de que a condenação do Jabaquara é impraticável nos USA, coisa que todos os seis escritórios claramente negaram - demonstrar o horroroso comportamento da Northrop no Brasil, onde foi condenada por má-fé por não ter depositado a caução, apesar de ter prometido ao Juiz McDonald que obedeceria a Justiça do Brasil. É revoltante como nossos direitos foram abandonados e prejudicados com a omissão e desinformação da SK.

A HM pedirá para ele admitir na Califórnia todas as 65 famílias, mesmo aquelas que nunca entraram, ou desistiram, do Jabaquara. Também irá entrar com a mesma ação para aquelas famílias que nunca entraram na Justiça, seja do Brasil, seja dos Estados Unidos, assim como para as famílias da tripulação e das casas destruídas, tudo isso que a SK sempre rejeitou. Revertam-se assim os prejuízos que a SK causou a todas as famílias.

No Simpósio de Direito Aeronáutico e Seguros, realizado pela Universidade Aeronáutica de Daytona Beach nesta semana, foi muito comentada a condenação no Jabaquara, que a SK sempre atacou. No último dia do Simpósio, o próprio Vice-Presidente da seguradora da Northrop, Russell Mirabile - que escreveu aquela carta que a SK distribuiu a todos os senhores, em que desautorizava as discussões para um acordo que, através do Dr. Minutti, mantínhamos com o escritório Pinheiro Neto, defensor da Northrop - se reuniu comigo e confirmou que está, sim, aberto para discutir o acordo que, ele concordou, tem de ser feito conforme a Lei do Brasil. Eu disse a ele que os novos advogados, que substituem a SK, irão tratar e cuidar disso.

POR QUE TROCAR DE ADVOGADOS AMERICANOS?

Porque é o único meio de as famílias do Brasil (1) conseguirem uma proposta de acordo (a) sem riscos, (b) bem maior e (c) que possa ser aprovada pelos Curadores de Orfãos e homologada pelos Juizes, conforme as leis do Brasil ou, então, (2) conseguirem receber, na Justiça dos USA, as indenizações devidas pela Northrop, seja pelas condenações no Jabaquara, seja pelo júri da Califórnia.



SK 002336

QUAL O CUSTO, PARA AS FAMÍLIAS, DESSA TROCA ?

NENHUM ! Em verdade, o custo cai de 25% (da SK) para 24% (da HS). E tudo que a SK tinha de receber pelo trabalho e despesas nestes anos todos, terá de ser cobrado pela SK da HS, por força da lei dos USA - e não, absolutamente não, das famílias. Os documentos em anexo são claros nisso e repetem o contrato da SK.

Importante que todos saibam que, para mim, a troca é, em tese, pior, porque minha parcela também é igual, proporcionalmente, tanto nos honorários com a SK (25%) como com a HS (24%). Perco 1% ? Não ! Prefiro, claro, receber menos proporcionalmente - nos 24% da HS e não nos 25% da SK - mas o que interessa é a quantia final a que tenho direito garantido pelas leis da OAB do Brasil e dos USA, e essa quantia é determinada pelo que cada uma das 65 famílias receber, seja por acordo, seja por condenação. Assim, estamos no mesmo barco - quanto mais as famílias receberem, melhor para todos os advogados delas - e desde que rápido.

Demora ? Os acordos de abril, para receber, em 20 dias, no Texas, até hoje, nada. E por certo jamais passarão na Justiça do Brasil. A pressão para acordo melhor e rápido - ou júri nos USA - só pode vir com a HS, e não da SK, que está com casos na OAB, M.P., etc., e que diz que já perdemos nos USA, outra mentira.

QUAIS FAMÍLIAS JÁ TROCARAM A SK E PELA A HS ?

As duas únicas com quem tive tempo de falar, daqui de Miami, nesta semana. Uma família é do Prof. Dr. Fernando Lobo Vaz de Mello, Engenheiro Nuclear formado na França e Coordenador da Pós-Graduação da Universidade Federal de Belo Horizonte, e sua esposa, Professora Conceição Magalhães, Catedrática de Inglês da mesma Universidade, e formada na Inglaterra. Perderam o único filho, Alexandre, que também estudou, como a irmã Luciana, na Europa. A Professora Conceição tem dado entrevistas de páginas inteiras sobre a tragédia em O Estado, o maior jornal de Minas. O Prof. Fernando tem elaborado laudo pericial sobre as causas do acidente, e muito tem ajudado a Justiça Civil e Criminal na aplicação da lei no Brasil. Quando ele questionou os Engenheiros da Fokker sobre a carta que Rollin falsificou como sendo de dispensa de treinamento dos pilotos, a Fokker contatou a SK que, atendendo-a, enviou longa carta ao Professor, pedindo para ele parar com as investigações dele "para não prejudicar as propostas de acordo".

A outra família é da viúva Suzana Klepetar, co-fundadora e Diretora da ABRAPAVAA, e que muito tem trabalhado pelos direitos das famílias. Ela tem dois filhos e, após a morte do marido, teve de abrir uma pequena empresa para sustentar a família com dificuldades. Ela não é minha cliente no Brasil. A advogada

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01-23-01 TUE 09:44 FAX 302 577 4234

FRANCISCO E MINATTI

BERNAN & BERNESLSTEIN

PAGE 03

SK 002337

dela é a Dra. Lucimar M. Machado, que também apóia a troca da SK pela HM.

Por que só falei com essas duas famílias? Porque a HS precisava tomar providências urgentes - a favor de todas 65 famílias e outras - com o Juiz McDonald, da Califórnia, tendo de ser os novos advogados a favor de pelo menos duas famílias, uma sobre danos morais (os pais de Alexandre não dependiam, por inteiro, economicamente dele e, pois, não tinham direito, ainda, a pensões mensais), e outra família, sobre danos materiais, que é o caso da maioria das famílias e como é a situação da família Klepetar. Só agora, com esta carta, é que estou podendo informar aos senhores todos desta troca, e peço a todos informarem as demais famílias e seus advogados sobre este novo rumo para as indenizações.

Mais ótimas notícias - no Brasil, a Curadora de Órfãos foi favorável a nosso pedido e o Juiz da 28ª Vara - que condenou a TAM com sete sentenças idênticas (ainda faltam duas, das nove ações) - deve decidir agora em fevereiro meu pedido para as sete famílias receberem já que os alimentos de mais de quatro anos que ganharam nas ações do Processo 3 - Amando de Barros, Romero, Lemos, Fischer, Lima, Manhães e Arjona - sem cântico e com o desconto dos honorários de 10%.

→ E em Nova York, o Juiz Federal marcou para o próximo dia 5 de fevereiro, às 15 hs., a audiência em que a Northrop pagar US\$ 2.642.802,94 para as 26 famílias que represento na condenação do Jabaquara e cuja Rogatória está sob os cuidados dos Drs Peskin e Minitti - este terá de ficar nos Estados Unidos até essa decisão. Em anexo está a cópia dos itens 15 a 18 da Rogatória que tem mais de 150 páginas.

Todas as outras famílias - mesmo as que desistiram ou que nunca entraram no Jabaquara - poderão ingressar com outras Rogatórias para receberem esses seus direitos alimentares mensais, mas a indenização por dano moral, no valor de R\$ 2.000.000,00, por família, ainda não pode ser cobrada. Ela, porém, será cobrada nos próximos dias na Califórnia (vide explicação acima), pela HM, mas, inicialmente, apenas para as famílias Magalhaes-Lobo Vaz de Mello e Klepetar. As demais, para conseguirem a cobrança essa totalidade da condenação no Jabaquara, terão de trocar a SK pela HM, porque a SK abandonou o processo delas desde abril.

Se os senhores preferirem, poderão conversar diretamente com a SM, a cobrar em Miami, fone (305) 377-2200 ou fax (305) 377-2511, que já contratou uma telefonista brasileira e uma secretária que falam Português, além de todas as outras secretárias do escritório falarem Espanhol. Um secretário também deverá ser contratado no Brasil para ajudar as famílias. Eles deverão ir ao Brasil assim que sair o primeiro resultado nos Estados Unidos. Ou, claro, os senhores poderão falar com o Dr. Minitti (11) 3051-6965, ou Dr. Freitas (11) 251-5424, que defende a família Arjona.

Muito obrigado pela confiança de todos, e sempre às ordens.

Renato Guimarães Jr.

EXHIBIT "I"



MANOEL ANTONIO SCHIMIDT

Tradutor Público Juramentado e Intérprete Comercial
Matrícula N° 490 da Junta Comercial do Estado de São Paulo

Praga da Sê, 21 - 14° Andar - Conj. 1.409 - Tel.: (0xx11) 239-1077 - Fax: (0xx11) 3405-8603 - São Paulo - SP

LIVRO N° 0251 FOLHA N° 1 TRADUÇÃO N° I-53.359/001

I, the undersigned Sworn Translator and Commercial Interpreter, hereby CERTIFY this is the description and faithful translation of a DOCUMENT written in Portuguese, which I translate as follows:

ANEXO "A"

Renato Guimarães Jr.
P.H.D. by USP, Professor at UNICAMP
Master of Comparative Law, GWU, IASP
Phone No. (019) 3289-8989, 3289-8990 Fax No. 3289-4315
Rua Francisco de Toledo, 511
University - 13.083-470, Campinas SP

December 22, 2000.

Dr. Wanderley Minitti Esq.
Advocate at the Court of Law
of São Paulo, Capital

Dear Dr. Minitti

Confirming our deal, I hereby authorize you to retain a law firm in the United States not just to prosecute the Rogatory Letter, but also, upon acceptance by the families, to replace the law firm Speiser & Krause, with which I represent sixty five (65) Brazilian Families in the actions filed in California and New York and they failed to represent them for almost one year being limited to intermediate agreements with Northrop, Teleflex, TAM et al and their insurance companies, said agreements being null and void before the Brazilian laws, as I have stated in all litigations I acted before the Brazilian Justice Court and have communicated to the Honorable American Judges.

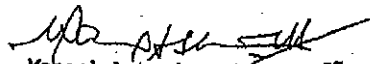
The legal fees to be established shall be in the same form, but inferior to those signed by Speiser & Krause, provided the same share be established to me.

Sincerely,

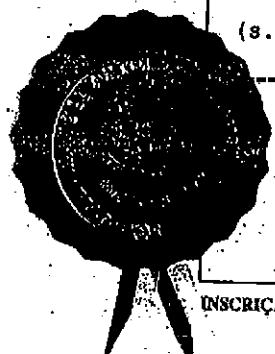
(s.) illegible

Renato Guimarães Jr.

NOTHING ELSE was contained in said original, which I return with this faithful translation. In WITNESS WHEREOF, I have hereunto set my hand and seal of office, this February 19, 2001.


Manoel Antonio Schmidt
Sworn Translator

vb



0192394315

RENATO GUIMARÃES

841 P31 DEC 22 '00 13

RENATO GUIMARÃES JR.

Doutor pela USP, Professor da UNICAMP

Master of Comparative Law, GYU, IASP

Fone (019) 3289-8989, 3289-8990-fax-3289-4315, 3289-3921, rua Francisco de Toledo, 511
Cidade Universitária - 13.083-470, Campinas, SP

Em 22, dezembro, 2000.-

Ilmo. Sr.
Dr. Wanderley Minitti,
DD, Advogado no Foro de
São Paulo, Capital

Prezado Dr. Minitti,

Confirmando nossos entendimentos, autorizo o senhor a contratar Escritório de Advocacia nos Estados Unidos não só para o cumprimento da Carta Rogatória mas também, aceitando as famílias, substituir o Escritório Speiser Krause, com o qual represento 65 famílias brasileiras, nas ações na Califórnia e Nova York, e que há quase um ano deixaram de defendê-las, limitando-se a intermediar acordos com a Northrop, Teleflex, TAM et al e suas seguradoras, acordos esses vis e nulos de acordo com as Leis do Brasil, conforme tenho denunciado em todas as ações em que atuo na Justiça Brasileira - e comunicado aos dignos Juizes americanos.

Os honorários a ser estabelecidos deverão ser nos moldes, mas inferiores, aos firmados pela Speiser Krause, preservada a mesma participação minha.

Cordialmente,

Renato Guimarães Jr.

EXHIBIT “J”

SPEISER KRAUSE

A PROFESSIONAL CORPORATION

140 EAST 45TH STREET, 34TH FLOOR
NEW YORK, NEW YORK 10017
(212) 691-0011
FAX: (212) 693-0483

ONE PARK PLAZA, SUITE 470
IRVINE, CALIFORNIA 92614
(714) 553-1421
FAX: (714) 553-1344

2300 CLARENDON BOULEVARD
SUITE 306
ARLINGTON, VIRGINIA 22201

(703) 522-7500
FAX: (703) 522-7905
November 9, 2000

800 JACKSON STREET, SUITE 750
DALLAS, TEXAS 75202-4427
(214) 782-4884
FAX: (214) 782-4774

201 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131
(305) 575-0400
FAX: (305) 575-0337

VIA FACSIMILE 011 55 19 289 4315

Renato Guimaraes
rua Francisco de Toledo, 501
Cidade Universitaria
13.083-470 - Campinas, SP - Brazil

RE: TAM
Our file #729.000

Dear Mr. Guimaraes:

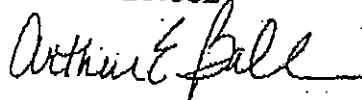
We have met with your representative, Dr. Wanderly Minniti, on several occasions in both Brazil and New York City in order to discuss the amount of attorney fees due you. However, as you are aware, Dr. Minniti insists that we pay him a fee of \$900,000.00 USD for his own time and effort in handling *your* case. Further, Dr. Minniti will not discuss the merits of your claim until such time as his fee is paid. To put it short, the notion of paying a fee to Dr. Minniti is ludicrous, and his insistence upon that payment has crippled our ability to discuss the merits of your entitlement to attorney fees.

On another matter, we are repeatedly alerted to your continuing efforts to convince other U.S. counsel to represent the TAM clients who have signed retainers with Speiser Krause. Not only is this a breach of any relationship which we might have had with you, it is actionable under U.S. law as tortious interference in a contractual/business relationship. Should you make further efforts in this regard, we will not recognize any claim by you for the payment of attorney fees.

As always, we continue to offer you the opportunity to speak with us directly regarding your fees. Should you be willing to discuss this matter, please let us know.

Sincerely,

SPEISER KRAUSE


ARTHUR E. BALLEEN

/js

TOTAL P.02

(FAX) 856 435 4662 P.016/062

DEC-02-2004 (THU) 16:43 Arthur E. Ballen, PC

CONFIDENTIAL

SK 000598

EXHIBIT “K”

BERMAN, KEAN & RIGUERA, P.A.

ATTORNEYS AT LAW

2101 WEST COMMERCIAL BOULEVARD
SUITE 2800
FT. LAUDERDALE, FLORIDA 33309

TELEPHONE: (954) 735-0000
TELECOPIER: (954) 735-3636

OF COUNSEL

VINCENT J. ALTINO, P.A.
ROBERT S. FORMAN, P.A.
LILLIAN S. KACHMAR**
JEREMY B. BERMAN

Also Admitted NY Bar **
Also Admitted PA Bar **
Also Admitted NJ Bar +
Also Admitted AL Bar □
Also Admitted IL Bar •
L.L.M. in Taxation ***

RICHARD E. BERMAN**
MICHAEL I. KEAN**
JOSE R. RIGUERA

ANGEL ARMAS•
ORION G. CALLISON, III□
CRISTINA E. GROSCHEL
BRET L. LUSSKIN
BRIAN J. MCCARTHY***
RICHARD A. SACHS
LAURA J. VARELA
ELENA WILDERMUTH***

April 24, 2007

Via Fax and U.S. Mail

William J. Apuzzo, Esq.
Apuzzo & Chase, LLC
800 Third Avenue, Suite 800
New York, NY 10022

Re: *Guimaraes v. Speiser Krause*
Case No.: 05-CV-2210(DC)

Dear Mr. Apuzzo:

Please find enclosed Plaintiff's Privilege Log in connection with the supplemental production of documents recently submitted to your office.

Very truly yours,
BERMAN, KEAN & RIGUERA, P.A.

Jose R. Riguera

JRR/dlf

Enclosure

cc: Richard E. Berman, Esq.

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PRIVILEGE LOG

DATES	DOCUMENT DESCRIPTION	PRIVILEGE
7/18/00	Correspondence from Renato Guimaraes to Richard S. Peskin re: dispute with Speiser Krause concerning TAM settlements	Attorney-Client and Work Product
7/18/00	Correspondence from Richard S. Peskin to Renato Guimaraes re: dispute with Speiser Krause concerning TAM settlements	Attorney-Client and Work Product
10/17/00	Correspondence from Renato Guimaraes to Richard S. Peskin re: enforcement of Jabaquara judgment	Attorney-Client and Work Product
11/1/00	Correspondence from Renato Guimaraes to Daniel Grunfeld re: possible representation of TAM families	Attorney-Client and Work Product
1/18/01	Correspondence from Jeffrey Herman to Renato Guimaraes re: possible representation of TAM families	Attorney-Client and Work Product
1/19/01	Correspondence from Jeffrey Herman to Vaz de Mello family re: retainer agreement for TAM litigation	Attorney-Client and Work Product
1/22/01	Correspondence from Renato Guimaraes to Jeffrey Herman re: TAM litigation	Attorney-Client and Work Product
5/19/01	Correspondence from Renato Guimaraes to Herman, Peskin, Minitti and Anselmo re: letters rogatory proceeding concerning TAM cases	Attorney-Client and Work Product
8/27/01	Correspondence from Jeffrey Herman to Renato Guimaraes re: settlement discussions concerning TAM cases	Attorney-Client and Work Product
5/9/03	Correspondence from Renato Guimaraes to Herman and Stuart re: upcoming hearing in California concerning TAM litigation	Attorney-Client and Work Product
Undated	Various correspondence from Renato Guimaraes to Herman & Mermelstein re: TAM litigation and settlement discussions	Attorney-Client and Work Product
Undated	Correspondence to Peskin, Minitti, Clito & Anselmo re TAM litigation	Attorney-Client and Work Product
2/17/04-Present	Correspondence between Renato Guimaraes and Engstrom, Lipscomb & Lack re: possible representation of TAM families, possible representation of Guimaraes against Speiser Krause, and TAM litigation	Attorney-Client and Work Product
11/15/04	Correspondence from Renato Guimaraes to Steven C. Marks re TAM litigation	Attorney-Client and Work Product

11/29/04	Correspondence from Renato Guimaraes to Steven C. Marks re TAM litigation	Attorney-Client and Work Product
3/28/05	Correspondence from Renato Guimaraes to David Boies re: possible representation of TAM families	Attorney-Client and Work Product
4/5/05	Correspondence from Renato Guimaraes to Martin A. Feigenbaum re: possible representation of TAM families	Attorney-Client and Work Product
4/12/05	Correspondence from Renato Guimaraes to Daniel E. Vielleville re: possible representation of TAM families	Attorney-Client and Work Product
4/16/05	Correspondence from Renato Guimaraes to Martin A. Feigenbaum re: possible representation of TAM families	Attorney-Client and Work Product
4/18/05	Correspondence from Renato Guimaraes to Guy A. Lewis re: possible representation of TAM families	Attorney-Client and Work Product
Undated	Various correspondence from Renato Guimaraes to Guy A. Lewis re: possible representation of TAM families	Attorney-Client and Work Product
Undated	Correspondence from Renato Guimaraes to Eugene Andres and Jim Moore re: possible representation of TAM families	Attorney-Client and Work Product

EXHIBIT "L"

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
RENATO GUTMARAES, JR.,

Case No. 05-CV-2210(DC)

Plaintiff,

-against-

AFFIDAVIT OF GERARD LEAR

SPEISER, KRAUSE, NOLAN & GRANITO,
a professional corporation, f/k/a SPEISER,
KRAUSE, MADOLE & LEAR, a professional
corporation,

Defendant.

-----X
State of Virginia)
County of Arlington) ss.:

Gerard R. Lear, being duly sworn, deposes and says:

1. Our law firm, Speiser, Krause, Nolan & Granito ("Speiser Krause") represented the families of 65 of the victims of the crash of TAM Airlines flight 402, which occurred on October 31, 1996.
2. Speiser Krause instituted legal actions against those parties sharing liability for the air crash. An action was instituted in the Supreme Court of the State of New York, County of Westchester. This case was transferred to, and litigated in, the Supreme Court of the State of New York, New York County. Speiser Krause also instituted actions against a number of defendants in the Superior Court of California.
3. After three years of intensive and expensive litigation, the insurance carriers for the primarily liable defendants started to engage in meaningful settlement discussions.

4. Our clients provided us with extensive damages information which included, but was not limited to the number of surviving family members of each victim, whether there were surviving minors, the victim's age, state of employment, annual earnings and the like.
5. Using the information our clients had provided to us, and based upon our experience in litigating aviation disaster matters, Speiser Krause was able to estimate the value of each case for settlement negotiation purposes. In negotiating settlement offer values we also considered the percentage of liability borne by each of the defendants, and the potential for United States courts to retain jurisdiction over the cases. The defendants in the California proceeding moved to stay or dismiss those proceedings on *forum non conveniens* grounds, and that motion was granted.
6. In April 2000 we received firm offers of settlement from the defendants which we communicated to our clients in Brazil. Most of Speiser Krause's clients accepted the offers that were made, and those clients' cases settled. These settlements were approved by the Brazilian courts. These clients were paid, and we were paid our retainer fee of 25% of the amounts recovered on their behalf, plus 2% for the expenses we had incurred in litigating these matters on our client's behalf. From our fees, we paid local Brazilian counsel who represented the families.
7. Renato Guimaraes, Jr., a Brazilian attorney, represented some of the families. He opposed the settlements which had been proposed by the defendants' insurers. Mr. Guimaraes refused to assist those clients who wanted to settle. He refused to draft or

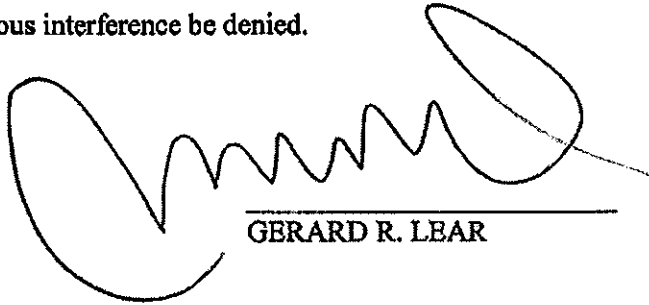
complete documents, and refused to take the procedural steps before the Brazilian courts to effect the settlements, as the clients had wished. As a result, other Brazilian counsel completed the settlements and were paid a fee. Renato Guimaraes was not paid by Speiser Krause.

8. The plaintiff initiated a course of conduct to convince the clients to fire Speiser Krause, and to replace Speiser Krause with other U.S. counsel. His conduct included defamatory writings which alleged that Speiser Krause was guilty of criminal acts, and was betraying its clients. Mr. Guimaraes made these statements to the Brazilian media, the Brazilian Bar Association, the Brazilian Attorney General, the United States Federal Bureau of Investigation, judges of the courts of the United States District Courts, judges of the New York State Supreme Court, Florida Circuit Court, California Superior Court, multiple United States law firms, and to the TAM clients, and their Brazilian family counsel. Plaintiff, Renato Guimaraes, as evidenced by the frequency, number and scope of his defamatory allegations, and by his own admission intended to severely injure Speiser Krause's finances and reputation. We continue to learn of the wrongful acts Renato Guimaraes committed against us.
9. As a result of his influence, at least nine of our clients have discharged us and substituted our firm with other U.S. counsel (presently, the law firm of Engstrom, Lipscomb & Lack of California).
10. It is undisputed that we had retainer agreements with these nine clients wherein Speiser

Krause was to receive 25% of the sums recovered, and 2% to reimburse our expenses.

11. We were discharged by these clients without any cause being given by them concerning the quality of the representation we provided. We have learned that these nine clients are "very tied" to Mr. Guimaraes, are very loyal to him, and followed his advice to fire us. Since our retainers with these clients were contingent, our continued representation of them bore no risk out-of-pocket costs or fees to them, and there was no financial reason in that regard for them to discharge us. Any immediate financial needs expressed by these clients contrasts strongly with the offers of settlement the TAM defendants communicated to them over seven years ago.
12. Speiser Krause negotiated a settlement on behalf of each of the nine clients that subsequently discharged our firm. After being discharged, we could not continue to litigate or negotiate on behalf of these clients. Speiser Krause's relationship with these clients carried a prospective economic interest. Specifically, based upon its retainer agreements, Speiser Krause expected to be paid a definite sum which was based upon the amounts we had negotiated in offers of settlement. Mr. Guimaraes, by convincing the clients to fire us destroyed our relationship with them, and with it, our opportunity to earn 27% of the damages these clients were to recover. Speiser Krause has filed charging liens against potential recoveries in these cases. None of these former clients or their present counsel have agreed that they will pay Speiser Krause the contract amount of 27% of the recovery. As such, we will have to resort to litigation to recover our fees, and precedent dictates that our recovery will be based on *quantum meruit*.

WHEREFORE, your deponent respectfully prays that the plaintiff's motion for summary judgment on our counterclaim for tortious interference be denied.



GERARD R. LEAR

Sworn to before me this 28th
day of June 2007.



Notary Public

My Commission Expires December 31, 2011]

EXHIBIT "M"

LEGAL TRANSLATION SYSTEMS
32-69 31st Street, Long Island City, NY 11106 USA (212) 629-4541
academictranslations.com e-mail: depaula@nyic.com

RENATO GUIMARAES JR
J.D.

On October 5, 2000

To Speiser Krause
Messrs. Arthur and Leigh Ballen
Hotel Maksoud Plaza, apartment 1507
Sao Paulo, SP – in hands

Ladies and gentlemen

I hereby confirm what I told you, about a week ago: that SK, and therefore, myself as well – by virtue of our contract, may have our legal representation powers removed by the 65 families, as set forth in our Retainer Letter power of attorney.

The reasons: there is growing evidence, since April, that you are no longer acting as attorneys for the families, in U.S. Courts. There is no information about any motion, by your, after late 1999, on behalf of the families' rights. Quite the opposite, your only attitude, since then, is to convince the families that the conditions of the settlement offer made in April, written by TAM's attorneys – and you do not know Portuguese or Brazilian law – are excellent and final. Such behavior appears, as several families told you, in April, that you shifted sides, representing our adversaries, the companies, rather than as attorneys specialized in Aviation Law. The judgment against Northrop is considered by SK – which always advise me to pressure the defendant as much as possible, so that the Judge in California would admit the Brazilian judgment in the USA – to be useless for the U.S. judiciary, in spite of the fact that bad faith (contempt of court) is not even mentioned in the legal brief you gave me. Therefore, it has been extremely difficult to try to convince these clients that you are not working for the defendants. SK's coercion against me – if I do not support their proposal – is illegal under Brazilian law, and especially after a judgment was obtained against Northrop – and Mr. Granito is trying to threaten me with a claim for damages, in the USA, if the settlement proposal fails, or your (threat) that you will refrain from paying my part of the legal fees relative to the legal actions brought by the 65 families in the USA and through widows Sandra Assali and Lucia Aquino. Also from false reports in the press, no doubt, at TAM's doing, insisting that the 26 families that I represent in Brazil against TAM dismiss me, and that will be provided a "free" attorney as my replacement, which has already taken place in five cases under sub judice investigation and by the Brazilian Bar Association, alleging that I was the obstacle for reaching a settlement – an infamy – which is harmful to the families, to us, to Justice and citizenship. All of this reinforces the idea that you have, for a long time, violated the sacred role of advocating the rights of families and their dozens of orphans, against economic and dirty power of mega companies. Another example: the evidence of serious fault, even willful misconduct by "somebody" at Northrop, according to the Jabaquara Criminal Court's decision, and which SK's lawyer, Thomas A. Frizzell, Jr., described to me and my son in detail, in my last trip to New York, whom Mr. Granito

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tried to discredit as "very young". I hope that the request made to the FBI's Deputy Director, Mr. Louis J. Freeh, is complied with, to wit: that a copy of the evidence produced by Mr. Frizzell - "boxes and boxes", according to Tim Cook - which SK never provided for appreciation by the Brazilian judiciary, which were never mentioned.

Therefore, I ask so that you and I do not lose our clients, that you urgently resume working as you did in Tim Cook's time, who managed to obtain a suspension of inconvenient forum in California, a fact both myself and the families are very proud of. Tell, or rather, I will tell President Russel M. Mirabile or Director Antony (sic) G. Bouscarem, from USAU - United States Aviation Underwrites, Managers, United States Aircraft Insurance Group, or Ken Kresa, Northrop's President, and President Rolim and Attorney Luiz Arena Alvarez, from TAM, that there isn't a slight chance that the proposed settlements will work in the Brazilian Judiciary (proven by my accusations, in the actions I am involved in, and my request, which has been suspended before the Federal Prosecutor's Office to initiate a civil investigation concerning these settlements), even if Renato Guimaraes Jr. is no longer, for any - any, I repeat - reason the Families' attorney. Several, and I mean, several honest and capable attorneys, prosecutors and judges, are very aware of this scandal, and they will in my absence - peacefully, in this country where a lot of strange deaths occur - strictly continue to defend the rights of these families, as well as my own.

Any more confrontation would be harmful and dangerous for all involved. We should actually respect everybody's (SK's, the families and my rights) rights in this case, with decent settlement offers and conditions, ensuring everyone has the freedom to decide, at their own will. Justice should not be subject to violence.

I reserve the right to use this letter as I deem suitable, to ensure Justice, for the families and myself - should it not be replied to, with a reasonable response, and shortly.

Sincerely

Renato Guimaraes Jr

Power of Attorney Wanderley Minitti

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EXHIBIT "N"

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RENATO GUIMARAES JR
J.D.

On October 9, 2000

To Speiser Krause
c/o Arthur Ballen and/or Leigh Ballen
Hotel Maksoud Plaza, Al. Campinas, 150, phone 253-4411, apartment 1507
Sao Paulo, Capital

Ladies and gentlemen

My attorney Richard S. Peskin advise me that you, in a meeting with him, about two weeks ago in New York, alleged I had to receive from you – as a share that we agreed, by contract – 25% (twenty five percent) of the total 25% (twenty five per cent) that Speiser Krause and I jointly charged as professional fees relative to the 65 (sixty five) claims pending in the N.Y. and California courts, on behalf of the Brazilian and U.S. families, against TAM, Fokker, Teleflex, Northrop Grumman et al – but only relative to powers of attorney where my name appears next and then after Speiser Krause's name, in the first paragraph of the first page of our Retainer Agreement, TAM Brazilian Fokker 100, October 31, 1996, in which signatures are not shown, as they appear in the second page of the same instrument. These powers of attorney would number 30. In the other thirty and change where my name – strangely – no longer appears now, and in respect to those I would not have, any longer, rights to the 25% (twenty five percent) attorneys' fees: the attorney's right is being criminally violated.

You are hereby, unequivocally, notified - preventing further obligations and preserving and reiterating my rights, as well as formally indicating my intentions – that the above mentioned version is criminal – whether due to (a) a misrepresentation, if my name was innocently omitted in the original text, and now you want to apply a different meaning to our obvious agreement with all families which is both public and well known, object of several letter/fax communications among ourselves, and witnessed by dozens of relatives; or (b) documentary misrepresentation, with a willful act of materially allowing the false version of the celebrated contracts with the change of their respective first pages – which do not contain signatures, only Speiser Krause's initials, generally Mr. Arthur's – removing the original page containing my name, replacing it by another page, intentionally missing my name.

You are, as this day or as of the date in which any settlements might be signed, or as of the date where they are paid pursuant to Court orders, or extra judicially, in default of my share of 25% (twenty five percent) of our joint attorneys fees of 25% (twenty five percent).

I am enclosing hereto copies of two contracts, as mere examples: Sandra Luiz Signorelli Assali's is legitimate, containing my name; and Neusa Maria Vicentini Amando de Barros and daughters was (a) innocently legitimate, omitting my name in the original,

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and only now, Speiser Krause commits a crime of misrepresentation attempting to give the contract a meaning that does not correspond to the truth or (b) was willful, as, as page 1, containing my name, was replaced, after the contract had been celebrated, by another page willfully missing my name, thus a material misrepresentation, a physical falsification of a contract with the attempt of excluding my name, having legitimate and exclusive rights to 25% (twenty five percent) of the total 25% (twenty five percent) attorney fees.

I am also enclosing hereto, our original contract, signed in the USA by Speiser Krause, to be executed in American courts, and sent to Brazil by fax, wherein our total attorney fees were originally 33.33% (thirty three, point thirty three percent) and then lower, given the large number of plaintiffs who joined the case, to 25% (twenty five percent), for all 65 contracts, which all families know perfectly well.

I am also enclosing a list of our cases, with the specific damages awarded to each of the families, relative to which Speiser Krause and I share total attorneys fees of 25% (twenty five percent) which we charged the clients – where the total 25% (twenty five percent) – is to be shared in the following percentages: 75% (seventy five percent) to Speiser Krause and 25% (twenty five percent) to me.

Finally a circular letter wherein Speiser Krause authorizes me to inform all Brazilian colleagues that they – also uniformly, relative to all families that brought us clients to file proceedings in the U.S. Courts – would be entitled to 10% (ten percent) of Speiser Krause's share, that is, exclusively relative to the above indicated Speiser Krause share of 75% of the total 25% (twenty five percent) fee of the Court awards to each family, as a result of our work.

I reserve to use this notification where and how I deem appropriate, to ensure Justice and to defend my professional rights, should this letter not be reasonably replied to, within a short time.

Sincerely

Renato Guimaraes Jr
Power of Attorney Wanderley Minitti

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SK 000646

RENATO GUIMARÃES JR.

Doutor pela USP, Professor da UNICAMP.

Master of Comparative Law, GWU, IASP

Fone (019) 3289-8989, 3289-8990, fax 3289-4315, 3289-2921, rua Francisco de Toledo, 511
Cidade Universitária - 13.083-470, Campinas, SP

Em 9, outubro, 2000.

Para Speiser Krause,a/c Arthur Ballen e/ou Leigh BallenHotel Maksoud Plaza, Al. Campinas, 150, fone 253-4411, apt. 1507São Paulo, Capital

Prezados Senhores:

Meu advogado Richard S. Peskin me avisou que os senhores, na reunião que tiveram com ele, há duas semanas em New York, alegaram que eu teria a receber dos senhores - como parcela que nós, entre nós, contratamos - 25% (vinte e cinco por cento) sobre os totais 25% (vinte e cinco por cento) que a Speiser Krause e eu cobramos, em conjunto, como honorários profissionais, referentes às 65 (sessenta e cinco) indenizações em curso na Justiça de Nova York e na Califórnia, em nome das famílias do Brasil e dos Estados Unidos e contra a TAM, Fokker, Teleflex, Northrop Grumman et al - mas apenas nas procurações onde meu nome aparece ao lado e em seguida ao da Speiser Krause, logo no parágrafo "1", da primeira página de nosso Retainer Agreement, TAM Brazilian Fokker 100, October 31, 1996, na qual não aparecem as assinaturas, que foram feitas na segunda página do mesmo instrumento. Essas procurações seriam umas trinta. Noutras trinta e pouco onde meu nome - estranhamente - agora não aparece mais, eu não tenho direito algum em nossos honorários de 25% (vinte e cinco por cento) : violado, criminosamente, o direito do advogado !

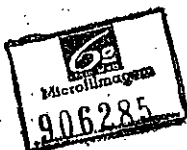
Ficam os senhores, por meio desta notificação, inequivocamente cientes - e para prevenir responsabilidades, prover a conservação e ressalva de meus direitos, e manifestar minha intenção de modo formal - de que a versão acima é criminososa, seja (a) pelo delito de falsidade ideológica, se meu nome foi inocentemente omitido quando da redação original e, agora, os senhores pretendem inserir sentido diverso ao que obviamente contratamos com todas as famílias, como é público e notório, objeto de numerosas cartas - x entre nós, e testemunhados por dezenas de familiares, ou seja (b) pelo delito de pura falsidade documental cometida, com o dolo já no ato de, matematicamente, permitir, depois, a versão falsa dos contratos celebrados, com a troca da primeira página - onde não constam as assinaturas, apenas a rubrica da Speiser Krause, geralmente do senhor Arthur - retirando a folha original, com meu nome, e substituindo-a por outra folha, já então propiciada, dolosamente sem meu nome nela;

E ficam os senhores constituídos em mora, a partir de hoje, ou da data em que forem sendo assinados quaisquer acordos para negociação das indenizações, ou da data em que forem elas pagas por decisão judicial ou extrajudicialmente - sobre minha soma de 25% (vinte e cinco por cento) dos honorários profissionais comuns de 25% (vinte e cinco por cento)

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Anexa a esta, a cópia de dois contratos, como mero exemplos: o de Sandra Lulza Signorelli Assali é legítimo, como meu nome nele; e o de Neusa Maria Vicentini Amado de Barros, e filhas, ou (a) *foi legítimo*, innocentemente, sem meu nome no original e, só agora, a *Speiser Krause comete nele o crime de falsidade ideológica*, tentando inserir no contrato a idéia que não corresponde à verdade, ou (b) *foi criminoso*, desde o momento em que a página "1", com meu nome, foi substituída, depois de celebrado o contrato, por outra igual mas já dolosamente sem meu nome sendo assim, tipo de falso material, fisicamente falsificado o contrato para tentar excluir meu nome como titular legítimo e exclusivo de 25% (vinte e cinco por cento) dos honorários totais de 25% (vinte e cinco por cento).



Junto a esta, também, nosso contrato original, assinado nos Estados Unidos pela *Speiser Krause*, para ser executado nas Cortes americanas, e enviado ao Brasil por fax, quando nossos honorários totais eram no valor inicial de 33,33 % (trinta e três, trinta e três por cento), e depois abaixados, graças ao elevado número de adesões, para 25% (vinte e cinco por cento), para todos os 65 contratos - como também todas as famílias perfeitamente sabem.

Em anexo, também, a lista de nossos casos, com os respectivos valores de indenizações de cada uma das famílias, em que nós, *Speiser Krause* e eu, partilhámos os honorários totais de 25% (vinte e cinco por cento) que cobramos delas, sendo: - destes 25% (vinte e cinco por cento) totais - 75% (setenta e cinco por cento) para *Speiser Krause*, e 25% (vinte e cinco por cento) para mim.

Finalmente, carta circular em que a *Speiser Krause* me autoriza a informar a todos colegas brasileiros que tem eles - também *uniformemente*, para todas famílias que nos *tipuxessem clientes* para entrar na Justiça dos Estados Unidos - direito à parcela de 10% (dez por cento) sobre a parcela da *Speiser Krause*, ou seja, sobre, exclusivamente, os 75% acima da *Speiser Krause*, que incidem em nossos honorários totais de 25% (vinte e cinco por cento) sobre o que cada família receber graças a nosso trabalho.

Reservo-me a usar esta notificação como e onde entender apropriado para a dignidade da Justiça e defesa de meus direitos profissionais, caso esta carta não mereça resposta razoável e em prazo curto.

Atenciosamente,

Renato Figueiredo Jr.
R.F. Figueiredo Jr.

EXHIBIT "O"

ESQUEMA SPEISER KRAUSE

Contra as Famílias Brasileiras

SK garante a Renato Guimarães Jr. uma parcela dos honorários para a SK representar todas as famílias brasileiras nos USA contra a Northrop: 65 famílias contratam a SK e Guimarães.

Guimarães ajuda SK, na Califórnia, durante um mês para a preliminar da incompetência (*forum non conveniens*) da Northrop. SK garante que, se perder, irá apelar. O Juiz MacDonald suspende a ação e determina outra, idêntica, no Brasil. O Prof. Irineur Strenger e Guimarães entram contra a Northrop no Jabaquara.

As famílias entram no Fórum João Mendes contra a TAM; Guimarães representa 26 das 99 famílias de mortos.

SK aciona a Northrop, TAM e outras em New York, onde a Fokker faz acordo de cerca de US\$ três milhões com uma viúva americana que continua acionando a Northrop. A ação de brasileiras continuam suspensas aguardando o desfecho da ação do Jabaquara contra a Northrop.

No Brasil, a TAM joga a culpa na Northrop, e a Northrop, na TAM. Guimarães vai à Holanda e obtém cópia do Relatório do Síndico da Falência do Fokker que prova que a Northrop, TAM e outras formam um *poll* para indenizarem as famílias. Guimarães prova, assim, nas ações no Brasil, a má fé da Northrop e da TAM.



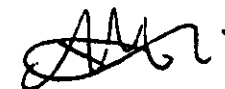
Logo após, a *Northrop*, *TAM* e outros (*Lloyd's*, de Londres) oferecem, através da *SK*, US\$ 40 milhões para acordo que termine com todas ações no Brasil e nos USA. Os Ballen dizem às famílias que a ação nos USA está praticamente perdida e que o acordo é excelente. Guimarães acha o acordo vil. *SK* o ameaça, impede que ele aconselhe as famílias, e se reúne com elas sem o conhecimento dele. 12

Guimarães visita New York de surpresa e Thomas Frizzell, da *SK*, afirma que provou a culpa da *Northrop* e que as chances de vitória são de 75%. Guimarães contrata *Robert S. Perkin* como seu advogado.

O Juiz do Jabaquara condena a *Northrop* a US\$ 1,1 milhão por danos morais por vítima e 2/3 dos vencimentos dela, retroativos pelos quatro anos desde a tragédia e até 65 anos da idade presumida, mais, por não ter depositado a caução ordenada pelo Tribunal, multa de 20% por *contempt of court* (má fé, *improbis litigator*).

Pinheiro Neto, defensor da *Northrop*, afirma que, autorizado pela condenada, pede que as famílias apresentem sua contra-proposta. O Dr. Wanderley Minitti, da *Perkin*, propõe 50% sobre a proposta anterior, exceto para os casos mais aberrantes.

SK divulga, às famílias, carta da *USAU*, seguradora da *Northrop*, desautorizando qualquer advogado, além da *SK*, para cuidar dos acordos. *SK* propõe que Guimarães apoie a proposta de acordo, nos termos anteriores à condenação do Jabaquara, em troca de Guimarães receber da *SK* menos do que tem direito - ou Guimarães será destituído por muitos de seus 26 clientes. Guimarães rejeita a proposta.



Guimarães pede à Thomas Pickard, *FBI Deputy Director*, cópia da prova, sonegada pela SK, da culpa da *Northrop*. 13

SK diz às famílias que a "opinião" de Guimarães é o "obstáculo" ao acordo e, com apoio do advogado da TAM - que comete o crime de tergiversão, como advogado do corrupto fiscal do Governo, IRB, e da fiscalizada Seguradora Unibanco - arruma o advogado Arruda Sampaio para substituir Guimarães e, assim, assinar o acordo pelas famílias, "sem ônus" para elas. Guimarães já foi desconstituído, até agora, por seis famílias clientes.

Guimarães vai à OAB, ao Procurador-Geral de Justiça e manda, aos Juizes dos USA, cópia da condenação do Jabaquara, coisa que a SK deveria ter feito há mais de 100 dias.

São Paulo, October 18, 2000

Reneo Guimarães Jr.

EXHIBIT “P”

2001 WL 1033611 (S.D.N.Y.)

Only the Westlaw citation is currently available.

United States District Court, S.D. New York.
In re: LETTER ROGATORY ISSUED BY SECOND PART OF THE III CIVIL REGIONAL
COURT OF
JABAQUARA/SAUDE SAO PAULO, BRAZIL
No. M13-72 (RO).
Sept. 7, 2001.

MEMORANDUM AND ORDER

OWEN, J.

***1** Before this Court is an application for an order requiring Northrop Grumman Corporation to deposit approximately \$8.6 million either with a Brazilian court or with this Court, in compliance with an order from the Second Part of the Third Civil Regional Court of Jabaquara/Saude, Sao Paulo, Brazil issued as a letter rogatory. The underlying action in this case arises from a fatal airplane crash in Brazil in 1996, since which settlement negotiations have been taking place. Seemingly unaware of the ongoing settlement negotiations here in the United States, a trial was held in Brazil and the court there rendered a judgment against the only defendant before it, Northrop Grumman. [FN1] The instant application seeks enforcement of that judgment.

FN1. The standards of this trial differed greatly from a trial in the United States. For example, the "trial" was based on paper submissions, the court did not agree to hear any testimony from Northrop Grumman's experts, and the court placed the burden on defendant to show that it was not responsible (this is one of many issues on appeal in Brazil).

The application is denied because venue is improper in this Court. Northrop Grumman has no facilities in the Southern District of New York and service on it was effected in Bethpage, Long Island, which is in the Eastern District of New York. Therefore the appropriate venue for this action is the Eastern District, and although this is just a short trip over the Brooklyn Bridge, any action in this Court beyond denying the application based on improper venue and possibly transferring it to the Eastern District could be declared invalid. The governing statute states that "the district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). Whether dismissal or transfer is appropriate "lies within the sound discretion of the district court." Minette v. Time Warner, 997 F.2d 1023 (2d Cir.1993). In this instance, transfer is not appropriate. To exercise my discretion in an informed manner, I have examined the merits and conclude this application does not merit the order it seeks, and the interests of justice would not be served by transferring it to another district.

However, since this application might be made anew in the Eastern District and this Court became familiar with the issues through briefing and argument, it is worth discussing three highly troubling aspects of this application. First, the foreign judgment in question is not a final judgment but is on appeal in Brazil. At the time the appeal was filed, the judgment was stayed by the trial court, and given this, it remains unclear why the trial part signed a letter rogatory order.

Second, even absent a stay, this application amounts to an attempt to enforce a foreign judgment through a letter rogatory, and the law is clear that a letter rogatory may not be used for this purpose. Plaintiffs contend that they are not seeking enforcement or

recognition of a foreign judgment, but rather merely requesting that this Court execute a procedural act incapable of being implemented in Brazil. This contention reflects either confusion about what plaintiffs seeks or an attempt to mislead this Court about what it would be granting. Applying to this Court for an order requiring Northrop Grumman to deposit with a court the amount of the Brazilian judgment is applying for enforcement or recognition of a foreign judgment. The relevant statutory provision for a letter rogatory states that "the district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal." 28 U.S.C. § 1782(a). By its plain language, the provision only authorizes the use of letters rogatory for the production of testimony and evidence, *not* for enforcement of a foreign judgment. See Osario v. Harza Engineering Co., 890 F.Supp 750, 753 (N.D.Ill.1995)("[T]here is no federal statute that authorizes a federal court to enforce a foreign judgment pursuant to a letter rogatory"); In re Civil Rogatory Letters Filed by the Consulate of the U.S. of Mexico, 640 F.Supp. 243, 244 (S.D.Tex.1986); Tacul, S.A. v. Hartford Nat'l Bank & Trust Co., 693 F.Supp. 1399, 1400 (D.Conn.1988). [FN2]

FN2. Similarly, no treaty authorizes the use of letters rogatory to enforce foreign judgments.

***2** Third, there is a serious question regarding the authority of Richard Peskin, Esq., the attorney making this application, to act on behalf of the families affected by the crash. The very same families who Peskin and Dr. Minitti, a Brazilian attorney with whom Peskin works, purport to represent also have earlier signed retainer agreements with the firm of Speiser, Krause, Nolan & Granito. Acting on behalf of these families, Speiser, Krause reached a settlement agreement in April 2000 of the claims against Northrop Grumman and other defendants (Tam Airlines, Fokker Aircraft, the manufacturers of the aircraft, and Teleflex, the company that made the cables). In addition, the purported lead petitioner in Peskin's application to this Court has signed and put before me an affidavit rejecting any attempt by Peskin, et al., to act on her behalf. (See Exhibit A, annexed hereto.)

At oral argument on this application, attorneys for Northrop Grumman and from Speiser, Krause explained the confusion as follows: this is a protracted and complicated international air crash litigation involving Brazilian decedents, a Brazilian airline, a foreign airframe manufacturer, and an American component part manufacturer. The earlier Speiser, Krause retainer agreements are with the families of 65 of the decedents to prosecute actions in the United States with Brazilian attorney Renato Guimaraes acting as local counsel on 26 of the retainers. A total settlement package in excess of \$40 million was reached in April 2000; since then the multi-national, multi-lingual parties to the settlement have been working on approximately 10 different release drafts. Speiser, Krause remains the counsel of record for the families. The local counsel in Brazil, however, not satisfied with the settlement (it is unclear whether his dissatisfaction stemmed from his fee or from some other aspect of the settlement), asked a new set of lawyers, among them Peskin and Dr. Minitti, to pursue the action in Brazil. Peskin, applying to this Court claiming to represent plaintiffs, answered this contention by saying that the retainer agreements have both U.S. and local counsel on them, and that this application is a separate divergent action from the underlying case that Speiser, Krause is handling. However, Peskin offers no useful explanation of the latter contention and it appears these actions cannot be other than intimately related. The question of who is accredited here and who is not remains open.

Given the flawed and highly troubling aspects of this application, a court where venue is proper would likely deny this application for an order requiring Northrop Grumman to deposit \$8.6 million with such court. Accordingly, venue being improper, the application

is denied and the action is dismissed.

So ordered.

S.D.N.Y., 2001.

In re Letter Rogatory Issued By Second Part of the III Civil Regional Court of

Jabaquara/Saude Sao Paulo, Brazil

2001 WL 1033611 (S.D.N.Y.)

END OF DOCUMENT

EXHIBIT “Q”

2002 WL 257822 (E.D.N.Y.)

Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court, E.D. New York.
In re: Letter Rogatory Issued By the Second Part of the III Civil Regional
Court of Jabaquara/Saude, Sao Paulo, Brazil
No. 01-MC-212(JC).
Feb. 6, 2002.

Richard S. Peskin, New York, for Petitioners.

Frederick C. Schafrick, Shea & Gardner, Washington, DC, James P. Connors, Jones
Hirsch Connors & Bull P.C., New York, for Respondent Northrop Grumman Corporation.

MEMORANDUM AND ORDER

GLEESON, District J.

***1** This case arises out of a plane crash in Brazil on October 31, 1996, in which 99 people were killed, and the resulting litigation in Brazil against, among others, Northrop Grumman Corporation ("Northrop Grumman"), which made the airplane's "thrust reverser." That litigation resulted, after trial, in a judgment rendered on June 30, 2000, in the Second Part of the III Civil Regional Court of Jabaquara/Saude, in Sao Paulo. That judgment established, in part, a schedule of "financial support payments" for the families who lost relatives in the accident.

The financial support payments portion of the June 30, 2000, judgment is the subject of a separate action in the Brazilian courts. According to Northrop Grumman's Brazilian counsel, the separate action in Brazil is an attempt to "obtain provisional enforcement" of the financial support payments. The letter rogatory that is the subject of this action relates to this attempt at enforcement.

The letter rogatory was originally filed in the Southern District of New York. [FN1] In a memorandum and order dated September 7, 2001, Judge Richard Owen denied this application on the ground of improper venue. *In Re: Letter Rogatory Issued by Second Part of the III Civil Regional Court of Jabaquara/Saude, Sao Paulo, Brazil*, No. M13-72 (RO), 2001 U.S. Dist. LEXIS 13753 (S.D.N.Y. Sept. 7, 2001). Anticipating that the letter would be filed in this court, Judge Owen also addressed the merits of petitioners' application, discussing three aspects that he found "highly troubling": (1) the foreign judgment in question is on appeal and therefore not final; (2) a letter rogatory may not be used to enforce a foreign judgment; (3) the attorney making the application may not have the authority to act on behalf of the families affected by the crash. *Id.*

FN1. Though the letter rogatory is addressed to the Southern District, its terms state that it can be applied to other United States courts as well.

In this court, Northrop Grumman was ordered to show cause why I should not enter an order (a) requiring it to deposit \$8,642,802.94 into an account with either this court or the Brazilian court; (b) restraining any bank accounts necessary to secure such amount; and (c) sequestering any assets necessary to secure such amount.

A. The Deposit of Funds by Northrop Grumman

It is well-established that letters rogatory are an impermissible method for enforcing a foreign judgment in United States courts. *See, e.g., Osario v. Harza Engineering Co.*, 890 F.Supp. 750, 753 (N.D.Ill.1995) ("There is no federal statute that authorizes a federal court to enforce a foreign judgment pursuant to a letter rogatory"); *In re Civil Rogatory Letters Filed by the Consulate of the U.S. of Mexico*, 640 F.Supp. 243, 244 (S.D.Tex.1986); *Tacul, S.A. v. Hartford Nat'l Bank & Trust Co.*, 693 F.Supp. 1399, 1400

(D.Conn.1988). Petitioners agree that a letter rogatory may not be used to enforce a foreign judgment, but insist that they are not attempting to enforce their Brazilian judgment. [FN2] Rather, they claim that they are asking only for performance of "the procedural act... requested by the foreign jurisdiction...of citing Northrop Grumman Corporation and further depositing or freezing the amount requested by the Brazilian court...." (Peskin Aff. ¶ 23.) I am not persuaded that, in substance, there is any difference between the relief petitioners seek and the relief they agree is unavailable to them. The \$8,642,802.94 they want Northrop Grumman to deposit with a court will undoubtedly go to the petitioners in Brazil. Indeed, despite petitioners' careful phrasing of their request for relief, the letter rogatory itself asks for an "order of execution" requiring the deposit by the respondent. Accordingly, to the extent that the letter rogatory asks this court to order Northrop Grumman to deposit funds with this court or the court in Brazil, the request is denied.

FN2. Therefore, I need not address whether petitioners may enforce the Brazilian judgment through an Article 53 proceeding pursuant to the New York Uniform Foreign Money-Judgments Recognition Act and brought under the jurisdiction of the diversity statute. See *Seetransport v. Navimpex Cent Navala*, 29 F.3d 79, 82 (2d Cir.1994) (French arbitration award enforceable as foreign money judgment under Article 53); *In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India, in Dec. 1984*, 809 F.2d 195, 204 (2d Cir.1987) (final Indian judgment enforceable under Article 53); *Island*

Territory of Curacao v. Solitron Devices, Inc., 489 F.2d 1313, 1323 (2d Cir.1973) (Curacao arbitration award enforceable pursuant to Article 53).

*2 Similarly, to the extent that the petitioners seek provisional relief, such as "freezing" or "sequestering" respondent's assets, this request is also denied. The only authority cited in support of such relief is a Florida case, *de Pacanins v. Pacanins*, 650 So.2d 1028 (Fla.Ct.App.1995), in which an injunction was entered pursuant to the Uniform Foreign Money-Judgments Act as enacted in Florida. See also George A. Bermann, *Provisional Relief in Transnational Litigation*, 35 Colum. J. Transnat'l L. 553, 598 (1997) (discussing *de Pacanins*, and pointing out that the situations generally arise when "a foreign court issues an order of provisional relief in aid of its own proceedings, and the litigant in whose favor the order was issued then asks a U.S. court to enforce it"). But, as respondent points out, in *de Pacanins*, 650 So.2d at 1030, there was concern that the assets would be dissipated and unavailable to fulfill a judgment; petitioners have made no showing of such a danger here.

B. Service of the Provisional Enforcement Order on Northrop Grumman

In emphasizing that their application does not include enforcement of a judgment, petitioners point out that they merely want this court to "cite" the respondent, presumably referring to service on the respondent of the Brazilian provisional enforcement order. Indeed, the affidavit accompanying the Order to Show Cause describes the letter rogatory as "requested by a foreign jurisdiction... to serve respondent Northrop Grumman Corp. with notice that it is required to deposit..." and indicates that the letter rogatory mechanism was necessary in part due to Brazilian counsel's "refusal of acceptance of service in this proceeding in Brazil." (Peskin Affidavit, ¶ 24.) The Brazilian judge who issued the request also clearly contemplated that service of process was part of the request. See Tab 6 in the letter rogatory ("I favor the issue of a rogatory letter, for service.") (J. Russo, dated August 2, 2000). Finally, respondent clearly interpreted the application as encompassing such a request, as it argues that such a request is improper in its Memorandum of Law. (Respondent's Memorandum of

Law, at 19.)

Notwithstanding respondent's arguments to the contrary, this application seems proper. 28 U.S.C. § 1696 provides for service of documents in foreign and international litigation. It reads, in relevant part:

The district court of the district in which a person resides or is found may order service upon him of any document issued in connection with a proceeding in a foreign or international tribunal. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon application of any interested person and shall direct the manner of service. 28 U.S.C. § 1696(a).

Respondent makes two arguments in favor of denying the request insofar as it seeks service on Northrop Grumman of the order of provisional enforcement from the Brazilian court. First, it asserts that service would be improper because the letter rogatory "has not been transmitted through the Central Authority of the United States," and movants have not complied with "other technical requirements of the Convention and its Additional Protocol," referring to the Inter-American Convention on Letters Rogatory. (Respondent's Memorandum of Law, at 19.)

***3** I find this argument unpersuasive. Article 4 of the Convention, "Transmission of Letters Rogatory," says that letters rogatory may be transmitted to "the authority to which they are addressed by the interested parties, through judicial channels, diplomatic or consular agents, or the Central Authority of the State of origin or of the State of destination, as the case may be." Inter-American Convention on Letters Rogatory, Jan. 30, 1975, 14 I.L.M. 339 (entered into force Jan. 16, 1976) (*reprinted* following 28 U.S.C. § 1781). *Cf. Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634, 644 (5th Cir.1994) (letter rogatory mechanism provided for in the Inter-American Convention does not preclude other methods of service); *Ackermann v. Levine*, 788 F.2d 830, 838 (2d Cir.1986) (service of process by registered mail, without a letter rogatory transmitted through the Central Authority, did not violate the Hague Service Convention).

The Additional Protocol applies "only to those procedural acts set forth in Article 2(a)," which does include service of process. Additional Protocol to the Inter-American Convention on Letters Rogatory, art. 1, May 8, 1979, 18 I.L.M. 1238 (entered into force June 14, 1980) (*reprinted* following 28 U.S.C. § 1781). But the Protocol is also defined as encompassing requests that are "made by a judicial or other adjudicatory authority of a State Party to a judicial or administrative authority of another State Party" and "are transmitted by a letter rogatory from the Central Authority of the State of origin to the Central Authority of the State of destination." *Id.* Since the request in this matter was not transmitted through the Central Authorities, as permitted by Article 4 of the convention, 28 U.S.C. § 1696, and 28 U.S.C. § 1781(b)(1) ("This section does not preclude... the transmittal of a letter rogatory or request directly from a foreign or international tribunal to the tribunal, officer, or agency in the United States to whom it is addressed and its return in the same manner"), the Additional Protocol does not apply.

Respondent's argument is also undercut by the plain language of 28 U.S.C. § 1696, which specifically authorizes this court to order service "pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal" or "upon application of any interested person." In this case, we have both a letter rogatory and an application of an interested person. *See also Service By United States Courts at the Request of Foreign Countries*, 28 Fed. Proc. L.Ed. 65:220 (1996) ("There has traditionally been a reluctance on the part of American courts to comply with letters rogatory... [28 U.S.C. § 1696] is intended to overcome this reluctance of United States courts by making clear that the courts' inherent authority to grant international judicial assistance includes the power to comply with letters rogatory.").

Second, respondent asserts that "Brazilian counsel has informed us that Article 210 of the Brazilian Code of Civil Procedure requires that letters rogatory be transmitted 'through the diplomatic service,' " and therefore the letter rogatory has not been validly transmitted under Brazilian law. (Respondent's Memorandum of Law at 19; Giusti Decl.

¶ 17.) [FN3] If respondent wants to oppose the provisional enforcement order on grounds based in Brazilian law, I assume it is free to do so in the Brazilian court. See Hans Smit, *Recent Developments in International Litigation*, 35 S. Tex. L.Rev. 215, 231 (1994) ("It is for the Swiss courts to decide the consequences of the service.") (discussing an analogous case). Moreover, because the language of 28 U.S.C. § 1696 clearly states that "[s]ervice pursuant to this subsection does not, of itself, require the recognition or enforcement in the United States of a judgment, decree, or order rendered by a foreign or international tribunal," respondent is not unfairly prejudiced by such service. See also *Sprague & Rhodes Commodity Corp. v. Instituto Mexicano Del Cafe*, 566 F.2d 861 (2d Cir.1977) (service of Mexican letters rogatory pursuant to 28 U.S.C. § 1696 does not require recognition or enforcement of the Mexican judgment).

FN3. According to the English translation provided by Northrop Grumman, Article 210 of the Brazilian Code of Civil Procedure reads: "Letter rogatory shall comply with the provisions of the international convention as to admissibility and method of performance, in the absence thereof, it shall be sent to the foreign judicial authority, by diplomatic means, after it has been translated into the language of the country in which the requested act is to be performed." (Respondent's Memorandum of Law, Exhibit I.) The language of this Article does not appear to preclude transmittal of the letter rogatory as it has occurred in this proceeding, and Northrop Grumman's counsel has not provided authority to demonstrate otherwise.

In the absence of such authority, I reject Northrop Grumman's argument as contrary to the clearly contemplated procedure--in the Inter-American Convention, 28 U.S.C. § 1696 and 28 U.S.C. § 1781(b)--of courts in different countries communicating directly with each other, and providing assistance of precisely this nature. Cf. *Chemical Waste Management v. Hernandez*, 1997 WL 47811, at *2 (S.D.N.Y. Feb. 5, 1997) (upholding service as proper where court in Southern District of New York issued letters

rogatory directly to a court in Mexico authorizing service on the respondent, and Mexican attorney indicated that under Mexican law, courts have the discretion to channel letters rogatory through the parties rather than the Central Authority); *Commodity Futures Trading Commission v. Nahas*, 738 F.2d 487, 494 (D.C.Cir.1984) (noting, in a case involving an administrative subpoena served on a Brazilian, that "Brazilian law requires that service of process by foreign nations be made pursuant to a letter rogatory or a letter of request transmitted through diplomatic channels.") (emphasis added).

*4 In exercising my discretion on this aspect of petitioners' application, I am influenced by respondent's insistence that it has not been properly served with the order of provisional enforcement. [FN4] In their brief, respondent's counsel emphasize that this order of provisional enforcement cannot be enforced or recognized in any way by this court because "*Northrop Grumman was never served in the proceeding.*" (Respondent's Memorandum of Law, at 15; emphasis in original). Brazilian counsel relies on this lack of service as well in arguing that the order cannot be enforced. (Giusti Declaration, ¶ 12.)

FN4. By my count, Northrop Grumman has already received, directly or indirectly, the order of provisional enforcement at least three times: (1) the attempted service on Brazilian counsel on July 12, 2000, which was refused; (2) service of the letter rogatory, which includes the "writ of summons and attachment" at Tab 20, on Northrop Grumman in Bethpage, New York, on November 28, 2001; (3) the order to show cause itself, which included the enforcement order as Exhibit K to the Peskin Affidavit.

To eliminate any ambiguity and in accordance with the letter rogatory, I direct the Clerk of this Court to serve process of the attached order of provisional enforcement from the Brazilian court on respondent's counsel and Northrop Grumman itself in Bethpage, New York. To the extent there is any question about the identity of the petitioners, it is answered by the attachments to the letter rogatory, as conceded by respondent's counsel at oral argument.

Finally, I emphasize that this order--and the resulting service of process on the respondent--does not constitute "recognition or enforcement in the United States of a judgment, decree, or order rendered" by the Brazilian court, in accordance with 28 U.S.C. § 1696. I draw no conclusions about any obligations that the respondent might have in Brazil as a result of being served with the order of provisional enforcement, and the respondent has no obligation to deposit any money with this court.

For the reasons stated, petitioners' application is granted in part, and denied in part. So Ordered.

E.D.N.Y., 2002.

In re Letter Rogatory

2002 WL 257822 (E.D.N.Y.)

Motions, Pleadings and Filings ([Back to top](#))

• [1:01MC00212](#) (Docket) (Nov. 28, 2001)

END OF DOCUMENT

EXHIBIT “R”

856-435-4162

3155-3502

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 01-13502 CA (23)
Consolidated Cases

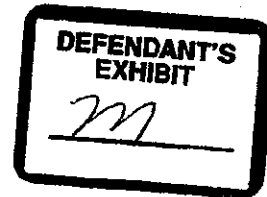
Suzana Greco de Franca KLEPETAR, et al.,

Plaintiffs,

vs.

NORTHROP GRUMMAN CORP., et al.,

Defendants.



**ORDER GRANTING DEFENDANTS MOTION TO DISMISS
PLAINTIFFS' CONSOLIDATED COMPLAINT**

THIS CAUSE came before this Court on October 17, 2002, on Defendants' Motion to Dismiss Plaintiffs' Consolidated Complaint on the basis of *forum non conveniens*. The Court having reviewed the motions, considered the arguments of counsel, reviewed the court file, and having been otherwise fully advised in the premises, the Court finds as follows:

1. In this case, Plaintiffs are Brazilian nationals who reside in Sao Paulo, Brazil. On or about October 31, 1996, an airplane (owned by TAM-Transportes Aereos Meridionais, S.A., d/b/a TAM Airlines ("TAM")) crashed during takeoff into a residential neighborhood in Sao Paulo, Brazil. TAM Flight 402 ("Flight 402") crashed and burned resulting in the loss of 99 passengers, crew, and innocent bystanders on the ground. Flight 402 was scheduled to fly from Sao Paulo, Brazil to Rio de Janeiro, Brazil. Plaintiffs allege that a thrust reverser failed and engaged during the ascent causing Flight 402 to descend rather than ascend. Plaintiffs either owned property on the ground destroyed in the crash; or are part of the estate of bystanders; or passengers who died as a result of the crash.
2. The seminal case as to *forum non conveniens* is *Kinney Sys., Inc. v. Continental Ins. Co.*, 674 So. 2d 86 (Fla. 1996). In that case, the Florida Supreme Court stated:

Forum non conveniens is a common law doctrine addressing the problem that arises when a local court technically has jurisdiction over a suit but the cause of action may be fairly and more conveniently litigated elsewhere. *Forum non conveniens* also serves as a brake on the tendency of some plaintiffs to shop for the "best" jurisdiction in which to bring suit—a concern of special importance in the international context. Commentators generally have noted a growing trend in private international law of attempting to file suit in an

American state even for injuries or breaches that occurred on foreign soil. There already is evidence the practice is growing to abusive levels in Florida.

Nothing in our law establishes a policy that Florida must be a courthouse for the world, nor that the taxpayers of the state must pay to resolve disputes utterly unconnected with the state's interests.

Id., 674 So. 2d at 88.

3. *Kinney* requires the following:

- [1] As a prerequisite, the court must establish whether an adequate alternative forum exists which possesses jurisdiction over the whole case.
- [2] Next, the trial judge must consider all relevant factors of *private* interest, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice.
- [3] If the trial judge finds this balance of private interests in equipoise or near equipoise, he must then determine whether or not factors of *public* interest tip the balance in favor of a trial in [another] forum.
- [4] If he decides that the balance favors such a ... forum, the trial judge must finally ensure that plaintiffs can reinstate their suit in the alternative forum without undue inconvenience or prejudice.

Id., 674 So. 2d at 90.

4. The Florida Supreme Court went on to note the following salient points:

Based on the foregoing discussion, we are persuaded that the time has come for Florida to adopt the federal doctrine of forum non conveniens. The use of Florida courts to police activities even in the remotest parts of the globe is not a purpose for which our judiciary was created. Florida courts exist to judge matters with significant impact upon Florida's interests, especially in light of the fact that the taxpayers of this state pay for the operation of its judiciary. Nothing in our Constitution compels the taxpayers to spend their money even for the rankest forum shopping by out-of-state interests.

We address two final points relevant to this case. First, under our holding today it now is immaterial how "corporate residency" is determined, because a corporation's various connections with Florida—if any—will only be factors to be weighed in the balance of conveniences, as outlined above. Therefore we answer all three parts of the certified question in the negative as qualified in this opinion. Even the fact that a corporation has its principal place of business in Florida does not necessarily preclude application of the doctrine of forum non conveniens. Instead, the trial court should gauge the situation using the "balance of conveniences" approach.

Id., 674 So. 2d at 93.

5. Applying *Kinney* here: Brazil is, and was previously held by the California court—which first considered this matter—to be, an adequate alternative forum which possesses jurisdiction over the whole case. Next, a consideration of the Plaintiffs' private interests indicates that the case belongs in Brazil. For example, the Plaintiffs had adequate access to evidence and

relevant sites in Brazil because the accident occurred in Brazil; the Plaintiffs had adequate access to witnesses in Brazil as most of the witnesses [investigators, police, Plaintiffs, etc.] live in Brazil; adequate enforcement of judgments exists in Brazil [if necessary, Plaintiffs can domesticate the Brazilian judgment, *see infra*]; and the practicalities and expenses associated with the litigation in Florida would entail the expensive translation of documents from Portuguese to English, the use of translators, travel to and from Brazil of the witnesses, attempting to serve subpoenas upon foreign nationals, etc. There exists a strong presumption against disturbing a plaintiff's initial forum choice. Given the travel of this case, Florida was not the Plaintiffs' initial forum choice—at best it was the third choice. California and New York were both considered and tried by the Plaintiffs before landing in Florida.

6. Next, the trial court considers the public interest of a trial in another forum. In broad terms, the inquiry focuses on whether the case has a general nexus with the forum sufficient to justify the forum's commitment of judicial time and resources to it. At best, this case has a tenuous nexus to Florida. There exists no reason to commit judicial resources to this case.
7. Finally, the trial court must ensure that Plaintiffs can reinstate their suit in the alternative forum without undue inconvenience or prejudice. Defendant Northrup Grumman Corp. agreed to submit to the jurisdiction of the Brazilian courts and waive the statute of limitations for a lawsuit arising out of this accident. There is no reason for these consolidated cases to visit Florida any longer.
8. Domesticating the foreign judgment. Forum non conveniens usually applies where a plaintiff attempts to litigate a matter for the first time. Such is not the case here. Many of the Plaintiffs previously filed suit in California where the case was dismissed due to *forum non conveniens*.¹ The Plaintiffs then filed suit and prevailed in Brazil or participated in a settlement of their claims in Brazil. To date, the Plaintiffs were unsuccessful in collecting their judgment against Northrop Grumman in Brazil. Therefore, the Plaintiffs next traveled to New York where they attempted to enforce a letter rogatory against Northrop Grumman in the Southern District of New York. The Southern District of New York dismissed the action as it was filed in the wrong district court. The case then crossed the bridge to the Eastern District of New York where the case was dismissed.
9. This case is about enforcing the Brazilian judgment. The Plaintiffs, through their counsel, are at a loss as to how to go about domesticating a foreign judgment in the United States.² In Florida, the correct procedure for domesticating a foreign money judgment does not require a judgment creditor to file a new lawsuit. *See e.g., Cutler v. Harrison*, 792 So. 2d 574, 575 (Fla. 3d DCA 2001) (discussing a similar statute, §§ 55.501, *et seq.*, "The statute contemplates that ... [a] judgment creditor would file the judgment in Florida, without the necessity of filing a lawsuit, ... and any litigation over the validity of the judgment would be initiated by Cutler as judgment debtor."). The correct procedure is found in §§ 55.601, *et seq.*, which provides for domesticating out-of-country foreign money-judgment. *See e.g., Nadd v. Le Credit Lyonnais, S.A.*, 804 So. 2d 1226 (Fla. 2001).
10. Teleflex claims that the Plaintiffs are barred from bringing a new claim in Florida where the very same claim was adjudicated in Brazil and Teleflex was cleared of any liability. *See*

¹The Plaintiffs did not specify which of their number filed suit in California.

²The Eastern District of New York, in footnote two of its decision, gave the Plaintiffs a broad hint as to the use of the New York Uniform Foreign Money-Judgments Recognition Act. The Plaintiffs did not take the hint. Moreover, California has its own version of the Uniform Foreign Money-Judgments Recognition Act codified as West's Ann.Cal.C.C.P. §§ 1713-1713.8.

Barbado v. Green & Murphy, P.A., 758 So. 2d 1173 (Fla. 4th DCA 2000). Teleflex should file a motion for summary judgment and reassert this claim. Similarly, the Defendants' claims that the Plaintiffs' Complaints exceed the statute of limitations will not be considered here, but in a motion for summary judgment.

WHEREFORE, it is **ORDERED** and **ADJUDGED**:

1. The Plaintiffs are engaged in blatant, transparent forum shopping. The Consolidated Complaint has no reason to stay in Florida. Moreover, the Plaintiffs could simply domesticate the Brazilian money judgment they previously received.
2. The Defendants stipulated that they would submit to the jurisdiction of the adequate alternative forum of the Brazilian courts.
3. Defendants' Motion to Dismiss is hereby **GRANTED** and the action is dismissed on the basis of forum non conveniens conditioned upon the Defendants' stipulation to submit to jurisdiction of the adequate alternative forum of the Brazilian courts.

DONE and ORDERED in chambers this January 15, 2003, at Miami-Dade County, Florida.


AMY STEELE DANNER
CIRCUIT COURT JUDGE

JAN 15 2003

AMY STEELE DANNER
Circuit Court Judge

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